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The Outlawry of War

CHARLES CLAYTON MORRISON

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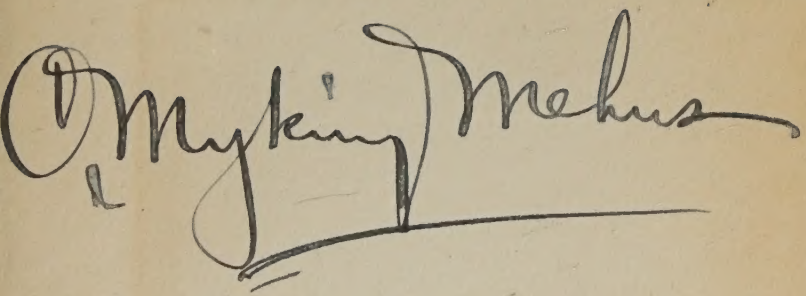

THE OUTLAWRY OF WAR

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THE OUTLAWRY OF WAR

A Constructive Policy for World Peace

BY
CHARLES CLAYTON MORRISON, D.D., LITT.D.
Editor THE CHRISTIAN CENTURY

WITH AN AFTERWORD BY
JOHN DEWEY
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TO

SALMON OLIVER LEVINSON

AUTHOR OF THE PROPOSAL FOR THE

OUTLAWRY OF WAR

AND ITS INDEFATIGABLE APOSTLE

THIS BOOK IS DEDICATED WITH

GRATITUDE AND AFFECTION

21811

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Publisher's Note

IN the first edition of The Outlawry of War the invaluable contribution by John Dewey appeared as a Foreword. Professor Dewey's statement presupposes that the reader of his words is already acquainted with the text of the book. It is in reality an Afterword. In this and subsequent editions it appears in its more appropriate place at the end of the volume.

PREFACE

THIS is called a preface only because it is placed at the front of the book. It is in reality the author's final word. It registers certain of his reactions upon reading his own chapters. Having finished the writing, I am impressed by the fact that I have nowhere tried to stir up the reader's emotions with a realistic description of the horrors of actual war—of past wars or of future wars. And yet we must not turn away from those writers who try to keep alive in our memory and imagination the terrific experience of suffering, devastation and waste which the world so lately passed through and which, alas, it is all too prone to forget. But such description has been no part of my purpose in writing this book.

My study of the movement against war, and my ardent sharing in it for many years, have left upon me the impression that until the appearance of the proposal for the outlawry of war, the peace movement was lacking in a comprehensive and clear insight into the nature of the thing it was out to destroy. War has been approached in a sort of mystical mood. Its essential nature has not been thoughtfully considered and objectively defined. As a consequence the peace movement has been

characterized by an almost blind empiricism. Lacking the chart and rudder of a reasoned understanding of war, our peace programs have represented reactions to a sort of obscurantist stimulus just to do *something*, with the result that they have for the most part gone wide of the mark or have confused the essential issue by dragging in irrelevant controversies which preclude agreement and inhibit decisive action.

If this book has any merit at all, it will be found, I think, in four theses: one, that the problem of war must be disentangled from all other controversies, and, thus isolated, brought directly before the nations for a yes or no decision; a second, that war is an *institution*—legal, established, sanctified, and supreme; a third, that it can be abolished only by disestablishing it, by casting it out of the legal system of the nations in which it is entrenched; and the fourth, that its disestablishment can be made effective only by establishing in its place an institution of peace *conceived not under political but under juridical categories.* This can be done only by a basic change in international law. A general treaty renouncing war as a means of settling international disputes would crystallize in legal form the moral will of the civilized peoples of the world.

I am not an isolationist. I have tried to deal frankly with existing international mechanisms, but this must not be interpreted as stubborn irreconcil-

ability. In my treatment of the league my purpose is constructive; I aim at unity not dissension. Candid discussion of this sort is, in my judgment, an absolute prerequisite to the junction of the peace forces. I look forward to the day when the present tension over means and mechanisms will be resolved, and when some such adjustments as are suggested in these pages may be made, so that the United States will be left with no reason for remaining outside the reconstituted league of nations. Not the least of the motives underlying this book has been the hope that it might contribute to such a consummation.

As to the technique for abolishing war, herein presented, I confess that on re-reading the chapters a fear has arisen in my mind lest I have laid myself open to the charge of attempting to fit out a complete and rigid mechanism which I desired to superimpose upon the reader's mind. Such an intention, in fairness to myself, I must utterly disclaim. I have tried to anticipate and explore many contingencies, and to indicate how they could be met. Perhaps I have gone into more detail than was necessary. Whether I have or not, I ask the reader to believe that my mood was in no sense a dogmatic one. I have only desired to complete as far as possible my own *visualization* of a world from which war had been banished. I am not wedded to my own imaginings. And yet I dare to hope that my humble attempt to anticipate questions may not be in vain, even though

I may not have anticipated the exact form in which they will arise or the exact answer which they will finally receive.

On one point, however, my conviction—I may as well confess it—approaches the intensity and fixity of dogma. That is, that any proposal in the name of peace, which makes any terms whatever with war, which compromises with or tolerates it in any form or guise, is foredoomed to futility.

If we are to abolish war, the first decisive thing to do is to outlaw it!

This book has been written in response to a widespread public demand for an authentic and comprehensive exposition of the proposal to outlaw war. My confreres among the pioneers in this approach to the war problem have seemed to lay upon me the task of responding to this demand. I have drawn freely upon the fragmentary literature of the movement—scattered articles and published addresses by Mr. Levinson, Senator Borah, Professor Dewey, the Rev. John Haynes Holmes, Colonel Raymond Robins, Judge Florence E. Allen, the Rev. M. V. Oggel, and others—but despite my substantial indebtedness to these sources, the statements made and the positions taken must be attributed to the author alone, who accepts sole responsibility for them.

Charles Clayton Morrison.

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The Outlawry of War

Chapter I

THE PRESENT CRISIS IN THE PEACE MOVEMENT IN AMERICA

IN AMERICA the movement on behalf of world peace has been overtaken by confusion, if not frustration. Since Versailles, the movement has passed through phase after phase, each with its own proposal for American participation in world organization. To the astonishment of our orthodox idealism the public opinion of the country has decisively rejected them all. A sense of futility is creeping into the minds of many peace leaders, and their followers are more than ever an easy prey to the cynicism of a hard-headed nationalism and isolationism. It is not strange that this is so, in view of the high hopes with which America entered the great war and approached the conference where its issues were to be finally settled.

Never in their history had the American people poured out so vast a volume of disinterested moral idealism. The realistic conception of war aims held by the European allies passed through the alembic of

President Woodrow Wilson's mind and came out in formulas of moral authority which our citizenry could not resist. We were to fight a war to end war, to crush militarism, to establish social justice, and to make the world safe for democracy. With the most naïve conception of the real causes of the war, and with not the slightest doubt that our allies would accept their victory in the same temper as that in which it was presumed we would accept it, our people plunged into the conflict heart-whole in their unselfish devotion to the great ideals which their President inscribed on the nation's banner.

I. EUROPEAN SYSTEM REJECTED

The disillusionment since the armistice has been tragic. Historical scholars having access to data which were concealed during the conflict have constructed a picture of the European situation in 1914 wholly different from that which our soldiers carried in their minds as they went forth to fight. The feeling that we were deceived, that it was not really the kind of conflict we thought it was, that in truth it was not our war at all, that our vast emotion over it was misdirected, and that the high moral consecration of our people was irrelevant to the ends we thought our victory would achieve, has been permeating steadily the public mind of America, resulting in just such spiritual havoc as sudden and profound disillusionment always brings. Any considera-

tion of America's course in international affairs since the war will be blind and unjust which fails to take into account this fundamental transformation of mood.

Woven in with these disclosures about the war has been the revelation of the nature of the peace as embodied in the treaty of Versailles. I do not refer alone to the spoils taken by the allies, to the redrawn boundaries, to the enormous reparation demands, to the coerced acknowledgment of war guilt on the part of Germany, or to the many other features of a victors' peace. I refer more particularly to the covenant of the league of nations which was accepted by President Wilson, and offered to America by him, as compensation for the flouting of those principles of the fourteen points upon which the allies had promised Germany that the peace would rest. The league, America was told, would be the instrument of ameliorating the unavoidably harsh terms of the treaty. The league would make war impossible, and with war outside the pale, the injustices of the treaty could be cured in due time; meanwhile they could be endured.

Hardly less disillusionizing than the post-war discovery of the truth about the war itself has been the post-Versailles discovery of the truth about the covenant of the league. America, still under the magic spell of war-time idealism, was in the way of accepting the league with the same kind of emotional

naïveté as that which characterized her acceptance of the war. The fact that the league was offered as the peace usufruct of the war gave it a strong appeal to the conscience of our people, and having no critical point of view from which to examine its pretensions, many naturally felt that an organization professing so lofty an aim should have the fullest cooperation of this government, particularly so when our aim in the war was peace; and the league was the only product of the war which even professed to have anything to do with peace. These impulses were further greatly strengthened by our President's close participation in the creation of the league. Thus began the struggle, in the senate of the United States and in the forum of a popular referendum, between those who accepted the apologetic for the league and those who thought they saw in it only another diplomatically constructed simulation of peace behind whose plausible façade the age-old militaristic game would continue to be played.

The result of this struggle the world knows. The United States declined to enter the league. Of the merits of the controversy or the wisdom of the decision it is not my present purpose to speak. In other chapters we shall enter as far into a candid consideration of the league as may be necessary for our purposes. For the present it is sufficient only to be reminded of the mood in which large numbers of our people regarded the league. They identified it with

the very cause of peace itself. Accepting the interpretation of the league's sponsors at its face value, almost the entire leadership of America's peace sentiment allowed all their eggs to be put into that one basket. The cause of peace was to stand or fall with the fate of the league. With its rejection by the senate it steadily slipped away from popular attention, and its full eclipse in American politics came about when the party of Woodrow Wilson definitively refused to include it in its platform of 1924. Since that time it has ceased to be a thing of any vital concern to American political thinking, and various peace organizations, while still under the spell of it, have found it impracticable to keep it at the front of their programs.

It was a disconcerting experience to American internationalism when the league failed to convince the public opinion of this country. But the peace groups turned to the Permanent Court of International Justice, established by the league in 1921, as offering the minimum of attainable relationship with the league system. President Harding, under the advice of Secretary Hughes, had given his approval to the proposal to adhere to the court, with certain reservations plausibly intended to make sure that by adhering to the court the United States would not thereby create any legal relation to the league. President Coolidge, who in 1919 and 1920 had been an open advocate of our entering the league with mild reser-

vations, in accepting his predecessor's mantle adopted the advocacy of such adherence to the court. The entire organized leadership of the self-conscious peace sentiment in the country, including many church headquarters' groups, mobilized their forces behind the resolution to adhere. Every attempt was put forth to make the court seem congenial to American ideals and pride. It was contended that the court had no organic connection with the league of nations. It was also contended that the court was really an American idea and an American policy. The contribution made by Mr. Elihu Root to the constitution of the personnel of the court was magnified by the court's proponents so as to seem like a stroke of genius, if not a divine revelation. The fact that two other of Mr. Root's recommendations, each incomparably more significant than the first, were rejected by the league was discreetly ignored. The court was pictured as the consummation of a generation's efforts by the United States against the hitherto unwilling governments of Europe on behalf of the substitution of law for war. The agitation among what might be called the professional peace advocates was intense. The people in general took only the most remote interest in the debate. Yet the organized headquarters of the peace societies and the churches persuaded the President and the senate that the court was backed by overwhelming public opinion.

The result of this contest also all the world knows.

The resolution of adherence passed the senate in January, 1926, but with five reservations attached, the effect of which would be, as President Coolidge later approvingly said, to reconstruct the court in one or two vital respects. Indeed, the reservations were of such a drastic nature as to make it necessary, practically, to join the court afresh each time we desired to take a specific case to it. The passage of the resolution of adherence, even with these reservations, was hailed as a great victory for world peace by the groups who, sentimentally identifying the court with the cause of peace itself, had been chiefly responsible for bringing pressure to bear upon the administration and the senate.

But it was a hollow victory. The reservations, instead of safeguarding America, were taken as a reflection upon the character of the court. The "polite gesture" which the President urged as the chief value of adherence turned out to be anything but polite. It was grudging and suspicious. The "tiny step" which we were urged to take toward a peaceful world proved to be in reality a step backward, at least in its effect upon public sentiment. For no sooner had the resolution of adherence passed the senate than the electorate was aroused in opposition. This was registered at the polls in the defeat of a number of senators who had conspicuously supported the resolution of adherence, and in the change of front of other senators. It became clear

that the country as a whole was not following the peace groups who had put pressure on the senate to pass the resolution of adherence. When therefore, some months later, the league members signatory to the court refused to accept the American reservations without a protective counter-reservation of their own, President Coolidge announced that such counter-reservation was unacceptable and that he would take no further action in the matter. It is generally agreed that Mr. Coolidge had by this time sensed the court's unpopularity in public opinion and was unwilling to carry it as a political liability. Thus the world court has been, like the league of nations, definitely dropped as an issue in American politics. In later chapters we shall examine the court in so far as the purposes of this book need to deal with it. It is sufficient at this point simply to be reminded of this phase in the deflection of American opinion from the proposals in the name of peace which took shape in the atmosphere of post-war Europe.

II. DEVELOPMENTS IN EUROPE

Meanwhile Europe was agitated over the Geneva protocol, and the education of the American mind as to the significance of the league system was further advanced by the controversy. Fashioned by a committee of the league assembly, the protocol of 1924 drew heavily upon the ideas of a rejected draft treaty

of mutual guarantee formulated chiefly by Viscount Cecil. It also incorporated certain ideas formulated by an American group concerning the "outlawry" of "aggressive war," and included a device for identifying the "aggressor." The aim of the protocol was declared to be to fill the gaps in the league covenant by making effective its rudimentary provisions of force against resort to war.

The protocol was dramatically blessed at Geneva in 1924 by Premiers Herriot of France and Ramsay MacDonald of Great Britain. It looked as if it might be ratified by the nations, when suddenly the MacDonald government was overturned by a conservative government which, after months of the most searching examination of the protocol, bluntly declared that Britain would have nothing to do with it. The British position, as expressed by Sir Austen Chamberlain, was that the principle of the protocol under which the nations would definitely assume military obligations to make war against an "aggressor" nation, would lay embarrassing and burdensome obligations upon the great powers, especially upon England, whose command of her navy would thus practically pass out of her own hands into the hands of the league. This, said Britain, was an intolerable contingency. Moreover, Britain heard from her dominions, notably Canada and Australia, a vigorous protest against the provision of the protocol for compulsory arbitration which seemed to subject all sorts

of questions, not purely international alone but domestic as well, to the jurisdiction of a "foreign" tribunal. This, it became apparent, would open the door to more war.

With the rejection of the protocol, Sir Austen Chamberlain directed attention to the more modest possibility of applying the principle of the protocol to definite regional groups of potential enemies, as contrasted with its ambitious application to all the nations in one blanket agreement. The regional alliance idea, formulated in Viscount Cecil's draft treaty of mutual guarantee, was revived. Europe thus turned away from the general covenant principle to the regional covenant principle. The "mutual protection" commitments of the league covenant were held at a discount, if not regarded as wholly impotent, and the principle of special alliances based upon direct mutual interest and overwhelming military force took their place.

The result was Locarno, whose significance we shall consider in a later chapter. The Geneva protocol did not get so far as to become a political issue in the United States, but it intrigued the peace groups of this country, most of whose minds, working imitatively in European molds, saw in its elaborate and complex mechanism the goal of all their aspirations. The characterization by the protocol of "aggressive war" as "an international crime" gave a certain plausibility to the scheme, as the idea of out-

lawing war had begun to be current in American thought. During the discussion of the protocol the seductive phrase "outlawry of aggressive war" entered the vocabulary of orthodox peace advocates. On several occasions President Coolidge used it with apparent sympathy, if not with approval.

By an odd process of reasoning the protocol was interpreted as at once a strengthener of the force articles of the league covenant and a mechanism for outlawing war! But under the searching analysis to which the conservative British government subjected the protocol, it became clear to almost everybody that the essence of the proposal lay in its greatening of the war system by the theoretical massing of overwhelming military power against a so-called "aggressor." Such a plan plainly had no kinship with the proposal to outlaw the *institution* of war. At most it was merely an arrangement to outlaw a *warring nation*, and to use war itself as the means of doing it. War, of course, is not outlawed by denying its use to an individual nation while retaining for a group of nations the right to resort to it. That is only more deeply to entrench the institution of war in the legal system of the world. As will appear in the chapter on "The Myth of Aggressive War," all such attempts at creating a so-called "international police force" for use against a recusant or offending nation are fatuous and foredoomed to failure. With that point, however, we are not here concerned. What I now wish to

make clear is the fact that American peace thinking, which was, for the most part, following the grooves of Europe's diplomacy, passed through a definite phase of disillusionment in the discussion of the protocol. Had the protocol been ratified by the nations in the league a campaign would, without doubt, have been launched with new vigor to get the United States into the league under the deceptive interpretation of the protocol as a mechanism for outlawing war. But with Britain's clear discernment that the protocol was not a peace plan at all, but in Mr. Lloyd George's words, "a plan for making war compulsory," America's conventional peace thinking followed Europe in dropping it.

Europe turned toward Locarno.

But Locarno, being a regional arrangement, contained nothing which could be used by American peace exponents as the basis of a new appeal for America's participation. Hence the dominant type of American peace thinking which reflected a mental exposure toward Europe was thrown for the first time upon its own resources. With the league, the court and the protocol removed so decisively beyond the range of acceptability that any further advocacy of them was an acknowledged futility, and with Europe engaged in developing the implications of the Locarno treaties, there was nothing for the American peace mind to do but to begin all over again. It was natural that, under such circumstances,

orthodox American peace idealism should turn wistfully back to its pre-war ideology and try to revamp the conceptions which dominated the earlier phase of the movement. It therefore seized upon the idea of arbitration—universal and compulsory arbitration—which it is now trying to invest with peculiar American sanctity.

We are not concerned here with this arbitration concept. What concerns us is the mood in which the experiences and controversies of the past decade have left the people of the United States. In the light of the events which we have just traced it would seem to be beyond dispute that American public opinion is now stubbornly set against entering any system of politico-military cooperation such as the league of nations is deemed to be. The curve of American thinking since 1919 has been veering steadily away from the league objective. Since the senate debate on the world court, the opposition has been more widespread and more pronounced than before.

III. DISILLUSIONMENT IN THE PEACE MOVEMENT

To those of us who hold the peace ideal with earnest conviction, the most deplorable thing about this "setting" of opinion against going into the league is that it involves also a hardening of peace idealism itself. Before the war, this idealism was so universal in American thought that the people imagined their country outstandingly in the lead of all the nations

in the matter of world peace. At the end of the war, the psychology of the whole world, including the United States, had been trained to identify the league with the very cause of peace itself. And now with the rejection of the league and its system, international idealism among the masses of the people of the United States grows more pale and faint with each passing year. The people refuse to follow those who have been speaking in the name of peace. The long struggle to keep America out of the European system has been the occasion of quickening into action the whole brood of isolationist, selfish, and jingoistic impulses. The unprecedented prosperity of the country tends to dull the sense of interdependence with the rest of the world. Thus the forces of reaction and national selfishness have fattened upon the honest efforts of those statesmen who were unwilling to see America entangled in military and political alliances with Europe, and insisted upon applying to all post-war proposals which came in the name of peace a discriminating intelligence, instead of embracing them on grounds of vague sentimentalism and evolutionary hope.

Not only has the unresponsiveness of the American political mind to the league system had a hardening effect upon peace idealism in general, leaving all peace plans stranded high and dry on the banks of popular indifference and cynicism, it has also left our numerous groups of peace advocates in a state

of pathetic frustration. The peace movement which issued from the war with such enormous impetus has plainly come to an end in a bankruptcy of confusion. Sponsored by fully seventy-five per cent of the intelligentsia of the country, officially supported by the headquarters of most of the religious denominations, backed by a powerful press, and after spending vast sums of money in propaganda through over one hundred groups organized under the banner of internationalism, the movement to secure world peace by persuading America to join the league or a subsidiary of the league, has issued in the denouement of futility.

This American international idealism, as we have said, reflected a mental exposure toward Europe. It was imitative, unoriginal, more or less cowed by the sophisticated diplomacy of Europe, and actually flattered by the intriguing prospect of America's participation with Europe on the ground floor of a world organization. All this is said without casting the faintest shadow of doubt upon its high-minded and intense sincerity. But now with league, world court, protocol, and plans for disarmament in eclipse, our many foreign policy groups find themselves embarrassed by the lack of a definite purpose. Having identified the cause of peace with the league system, and having staked everything upon America's acceptance of that system, the peace advocates do not now know where to turn. Their frustration would

be ludicrous if it were not concerned with so serious a business. Organizations to "prevent war," to "abolish war," associations to guide America's "foreign policy," to get America into the league by a "nonpartisan" route, innumerable "alliances" and "unions" and "commissions" on "international friendship and goodwill"—these organizations are in existence, with headquarters and financial supporters, and paid secretariats, and regional branches, and local chapters. Having focused their entire attention upon the European system, and fused their moral aim with the effort to persuade America to take her place in that system, what now are these organizations to do?

The peace organizations find any further discussion of league or league court an uncongenial and sterile exercise. These issues have lost their vitality. The whole European pattern of world organization stands revealed to American intelligence as containing no principle or promise looking toward the elimination of war, but on the contrary, as involving commitments highly dangerous to America and to the peace of the world if America should undertake them. For American opinion, as the case now stands, the arguments pro and con in connection with the European system are pretty much old straw. Why thresh it over and over? In this exigency the peace organizations are compelled to attempt a complete reorientation in their relation to the war issue. With

groping hands they seize now on this plan, now on that, as offering a hopeful program with substance enough in it to take the place formerly held in their program by league or world court. Their confusion reveals the lack of any basic philosophy of war and peace, reveals how wholly empirical has been their fervent support of the European system.

IV. ISOLATING THE PEACE PROBLEM

Open advocacy of the league has been practically discontinued, but the cause of world peace has not been abandoned. The implication would seem to be that even upon America's most European-minded peace advocates there now begins to dawn the possibility that world peace and the league of nations are not identical, that war may be gotten rid of without America's joining the league; indeed, that America's joining the league may wisely be deferred until the league or the nations in the league join with the United States in doing something fundamental about war.

This is the salutary and hopeful aspect of the peace movement's present state of frustration. The peace question is gradually being disengaged from the question of the present entry of the United States into the league of nations. Foiled in the attempt to obtain world peace by a politico-military alliance of the nations, America's peace groups are beginning to see that world peace may be achieved without such

a politico-military alliance. They are not clear as to the technique by which this is to be done. In their present state of confusion and incertitude some are an easy prey to many superficial and dangerous proposals, such as compulsory arbitration and selective neutrality, but the encouraging thing is that they are seeking to isolate the war problem from the problems connected with a world political organization and to discover a technique for dealing with it directly.

This is not the place to consider in detail the numerous proposals which are being put forward at random by the various groups. Besides the attempt to revive the pre-war interest in arbitration agreements, to which reference has previously been made, there are proposals of other sorts, but all of them are interim proposals, with every appearance of being extemporized while the peace movement is trying to catch its breath. Their shallowness and, often, their dangerousness, will appear the moment they begin to be seriously discussed. They are for the most part counsels of desperation, not of seasoned judgment. They illustrate the fact that not only nature but the peace movement as well abhors a vacuum. The spirit in which they have been adopted and announced was well illustrated in a meeting of some of the most prominent representatives of the leading peace groups after it became known that Europe would not accept the fifth reservation to the senate's resolution of adherence to the world court. In the

confidential report of that meeting the interior mind of the orthodox peace movement in America was laid bare by the following ingenuous minute: "Toward the close of the conference, the question was raised as to the possibility of coordinating organizational efforts on an international arbitration program for our government. It was argued that this would supply *a much needed new motive force* in the peace movement."

No more revealing expression could have been used. It discloses in a sentence the profoundly felt lack in the peace movement in America, namely, an adequate "motive force." Whatever motive power once existed in the proposal to join the league system has been steadily running down, and has now been largely exhausted. But there *never* was great *peace* motive power in the league proposal, so far as America was concerned. The idea of joining a world alliance to enforce peace never struck its roots deep into America's conscience. It was felt to be uncongenial to the genius of our people as well as to our political tradition. The most hopeful symptom in the peace movement is this naïve confession that a "new motive force" is "much needed." Acting upon that insight we may expect the peace groups to grasp at this and at that scheme in the hope of discovering the much needed new motive force; we may also expect that such superficial empiricism will result, *ad interim*, in the exploiting of many foolish

and irrelevant and hazardous proposals. But this need not arouse our impatience or our anxiety. The important thing is that at last, after being obsessed for a decade with the idea that world peace required for its establishment and maintenance a politico-military alliance of the nations, this obsession is broken, and that even the proponents of America's entrance into the league are now able to project other plans for ridding the world of war which do not presuppose our participation in the European system.

This falling of the kernel out of the husk, this stripping from the war problem of those layers of irrelevancy in which the real problem has been obscured, this tearing off of the benignant mask behind which the face of Mars has concealed itself in innumerable "peace" treaties and alliances for centuries, —this is the great gain which is coming to the peace movement in this its period of confusion and frustration. Those who once saw nothing but the league system as the hope of the world are now coming to see that the evil of war may be effectually attacked without involving the United States in the league, and even without depending upon the league at all! It is a startling change of front by American peace groups.

And it marks a logical and convenient point at which to begin our consideration of the proposal to abolish war by outlawing it.

For the essence and genius of the proposal to outlaw war consists in this, that it is a direct, frontal attack upon the institution of war by the united will of the nations without involving any nation in any political entanglement or military commitment whatsoever.

And it is the conviction of those who believe in this proposal that only by segregating the war problem from other problems, and by directly dealing with it in a manner appropriate to the nature of the thing that war is, can real progress and accomplishment be expected to crown the peace movement.

V. EMERGENCE OF OUTLAWRY PROPOSAL

We have been considering the American aspect of the peace movement in terms of those minds which opened out toward Europe and embraced the league system as the realization of the peace ideal. European diplomacy has provided the dominating *motif* of perhaps nine-tenths of American international thinking since the war, so that to be interested in world peace was virtually synonymous with being an advocate of our country's entrance into the league of nations. What little non-European peace thinking was being done made headway only with difficulty, and was almost powerless to get itself accepted as peace thinking at all. Indeed, by virtue of its indifference to or criticism of the league such thinking was stigmatized in orthodox circles as wilfully

obstructive of the cause of peace, and was mistakenly regarded by the uncritical public as abetting a policy of isolation and national irresponsibility and selfishness.

It was thus that the movement for the outlawry of war was long regarded in orthodox peace circles. Yet the outlawry proposal took form in the mind of its author, S. O. Levinson, nearly two years before the league of nations came into existence. It was given its first public interpretation in an article in The New Republic by Mr. Levinson on March 9, 1918, practically a year before the advent of the covenant. In the same month Prof. John Dewey published a commentary article, also in The New Republic. After the covenant of the league was laid before the senate and the country, disclosing the fact that the peace settlement had done nothing to change the legal and institutional status of war, Mr. Levinson, up to that time an ardent supporter of President Wilson's peace efforts, turned away from the politico-military scheme and began the development of his own concept in terms which he regarded as not only congenial to the best American traditions, but also as effective against war. In a number of pamphlets and articles published from 1918 to 1926 he has set forth in considerable detail the essence and program of the outlawry of war. Naturally, the statesmen who first responded to Mr. Levinson's proposal, men like Senator Borah and the late Sen-

ator Knox, were drawn from the circle of those critical of the league. There was no other audience available—the attention of the entire orthodox peace mind was focused upon the league as the sole hope of world peace, and every other proposal was impatiently stigmatized as purely obstructionist.

Following the introduction in the United States senate, in 1923, of Senator Borah's resolution looking toward the outlawry of war, the idea began to be discussed, and by 1924 the term "outlawry of war" began to appear in resolutions adopted by church and internationalist organizations. In 1925 and 1926 various peace groups gave it a certain kind of hospitality. It figured in a coalition agreement with leading representatives of pro-league and other groups as a promising solution of the world court controversy. That the coalition was sterile was due chiefly to the brightening hopes of pro-court advocates that their aim could be realized without the "handicap" of the outlawry conditions. But the episode helped to focus attention upon the outlawry proposal. And now with the world court issue laid on the shelf, the program embodied in Senator Borah's resolution is practically the only vital and promising peace program before the American mind.

Baffled and disillusioned in the attempt to draw the United States into the European system, the peace workers are dividing into two main groups: those die-hards who berate and condemn America for

her "selfishness" and "cowardice" and international irresponsibility; and those who, still believing in the sincerity of America's devotion to world peace, seek for a way by which the controversy over the league system can be appeased, and the powerful impulses of this country released and directed toward the goal for whose attainment all the world is yearning. The first group are irreconcilable to any peace program except that which was launched by the treaty of Versailles. They have lost their vision of the end in their passion for a particular conception of the means.

The second type of mind refuses to believe that the reason why the European system has been rejected by America is that this nation is indifferent to peace. Primarily interested in the goal, not in a particular way of attaining it, such minds therefore explore the possibility of finding other means, under whose banner a peace movement may be launched which will deal directly with war, *and with nothing else*. Isolating the war evil from the political irrelevancies which are associated with Europe's plan for regulating and preventing it, these undismayed American peace thinkers are asking: What kind of frontal attack can be made upon war in which the United States can whole-heartedly and consistently share? Those who ask this question, instead of turning toward Europe for an answer, turn toward America's own tradition and genius. They are beginning

to find the answer in the proposal to face the whole fact of war as an established institution, and to proceed against it by disestablishing it, in the only way in which it can be disestablished, namely, by an international agreement renouncing forever its further use and setting up in its place a supreme court of justice and law.

Chapter II

WHAT IS THE OUTLAWRY OF WAR?

WE are in the midst of a profound revolution in the way men look upon war. Always taken for granted—save by a few seers and idealists scattered along the path of history—as a natural and even glorious, but in any case an inevitable, event on the human scene, mankind is now beginning to regard war with a new mind. It is beginning to be perceived that war is natural only as barbarism is natural; glorious only as the standards of a nation's true grandeur have been obscured by ignoble ideals of patriotism, and nourished by false education, and supported by the misguided sanctions of religion; and inevitable only so long as society remains unenlightened concerning the artificial causes and traditions that produce it.

Since the great war, conscience and intelligence are being brought to wholly new levels, first of all by the infinite suffering and desolation of the late conflict, but even more by the fearful knowledge that the next war will be no mere repetition of the past war but will begin where that war left off. Thus memory and imagination cooperate to arouse the conscience and quicken the intelligence of men, driv-

ing them by both retrospect and prospect to find some way out of the intolerable conditions of a society so organized and actuated that its very structure involves it in catastrophic failure.

Such consciousness of need has set the mind of the whole world at work producing plans for peace. On no subject has intellectual activity in so short a time proved itself more fertile and productive. The development of those projects associated with the league of nations and arising from the diplomatic point of view of Europe has been indicated in previous pages. Meanwhile, not only have the diplomats and rulers of the nations been active in constructing schemes to provide against war, but the people themselves are thinking and planning. The really significant revelation resulting from the awards offered by Mr. Edward Bok in 1923 to Americans, and by Mr. Edward Filene in 1924 to Europeans, was not the intrinsic merit of the prize-winning plans, but the fact that in America alone over 22,000 peace plans, and in Europe more than 12,000, were submitted.

Intense feeling exists in religious circles and among college youth. The problem of war and peace is at last coming to be felt as belonging to the very genius not only of the church's social program but of the Christian faith itself. Resolution after resolution has been passed, like which in radical and uncompromising character no formulations of churchly re-

sponsibility for a peaceful world were ever made before. Announcement by thousands of individuals of their adoption of the extreme pacifist position, resolutions to withhold the church's blessing from another war and to disengage the church from the entire war system, and strong petitions to the government demanding effectual action on behalf of the abolition of war—these, typical of a wide divergence in view and attitude, taken together reveal the depth and intensity of the new mood in which men are looking at war.

I. RAPID GROWTH OF OUTLAWRY IDEA

In all these circles, political and religious, where the war problem is being earnestly felt, the proposal to outlaw war presents itself, in the words of the World Alliance for international friendship through the churches, as "the dominant and unifying ideal of all peace groups." It has become the climacteric word in which the churches phrase their resolutions. It lent its service to the use of political orators in the presidential campaign of 1924. It forced its way into party platforms and appeared in the speeches of all the candidates. President Coolidge repeatedly disclosed his attitude against war in terms of outlawry. The executive committee of the Federal Council of Churches of Christ in America issued with approval a document formulated at a conference of representatives of twenty-eight denomi-

nations held in Washington, D. C., in 1925, whose opening words were as follows:

> War is the most colossal calamity and scourge of modern life. It is not inevitable. It is the supreme enemy of mankind. Its futility is beyond question. *We are determined to outlaw the whole war system.* Economics and industry, social welfare and progressive civilization, morality and religion, all demand a new international order in which righteousness and justice between nations shall prevail and in which nation shall fear nation no longer, and prepare for war no more. . . . *War must be outlawed and declared a crime by international agreement.* . . . This stupendous, difficult and urgent task challenges the churches of America and all citizens of good will. It is a moral and religious as well as an economic and political task.

The proposal has been picked up by British political and diplomatic leaders, journalists and publicists, for many of whom Mr. J. L. Garvin speaks when he says in the London Observer, of which he is the editor, that "the absolute outlawry of war is the attainable ideal of the world." The enthusiasm at Geneva attendant upon the adoption of the protocol by the league assembly in October, 1924, could find no words in which to express itself equal to the claim that the protocol would "outlaw" war. Thus the term Outlaw War sits like a tongue of flame upon many diverse groups, whose understanding of its technical meaning may not be identical, but for whom the term expresses a higher hope and a more

uncompromising purpose than any previous proposal offered in behalf of world peace.

Doubtless the popular usage of the words, "outlawry of war," is far from reflecting in all cases an intelligent understanding of the philosophy underlying the simple proposal. I willingly concede that it often reflects rather an emotion than a reasoned conviction. The words "outlaw war" lend themselves with singular aptness as a fresh expression by which orators and resolution committees and diplomats can rail at war, stamp upon it, show their uttermost emotional condemnation of it. The psychology of the situation is not wholly unlike that which Jesus accepted when he spoke in parables which the people might not at once understand, but whose inner content would some time be disclosed. The term "outlaw war," used as a mere carrier of anti-war emotion, has piqued curiosity to know just what is the practical program which it contains. For the outlawry of war is a far-reaching method of actually dealing with war, and not a mere phrase to express an uncritical hatred of war in general. And gradually it has come about that the mere rhetorical connotation of the term is being pierced through and its profound juridical implications are being made clear.

The negative connotation of the term "outlawing" war suggests but one hemisphere of the full-orbed outlawry proposal. Its first critics, taking this negative aspect as the be-all and end-all of the proposal,

reacted with condescending approval of the good intentions of the movement, but with bland scorn of a plan to rid the world of war by a mere "fiat." Because the procedure starts with a declaration of purpose by one nation, for example the United States, these critics assumed that it ends with a mere declaration; that it is, therefore, a kind of hocus pocus or faith cure idea, an attempt to exorcise the war demon by a wordy denial of its reality. Dismissing all such misconceptions as unworthy of the statesmen and social philosophers who are urging the outlawry proposal as the one effective solution of the war problem, I ask to be allowed to use the term in no narrow, etymological sense, but as covering the entire concrete proposal to which it is applied.

II. THE GOAL OF THE PEACE MOVEMENT

As a method of getting at the reality of our subject unconfused by special words, let us forget for the moment all our plans and schemes of peace, including the outlawry proposal itself, and ask what it is, in our revolt against war, that we all are seeking. Let us begin at the end, instead of at the beginning, and describe as clearly as we can what all intelligent peace seekers are aiming at. Suppose we try to visualize a world without war—a human, not an angelic world; a mundane, not a celestial world; this familiar world of ours, not some other world—familiar except for the fact that the great war prob-

lem has been solved. We envisage nations dwelling in peace, a peace which rests upon a foundation as permanent as things in this human world of many tribes, tongues and nationalities may hope to be. In such a world order, what do we see standing in the place where war once stood?

The first answer to this question is likely to be: We see a world government, exercising legislative, judicial and executive functions from a world capital; to the authority of this super-government the nations defer, having renounced large measures of their former sovereignties in the interest of world welfare; war is no more because the world is now one! This idea of a political federation of the world, a planet-encircling superstate, has been the dream of peace transcendentalists for a long time. Whether it is possible of fulfilment, or even desirable, I shall not argue here. It is enough to say that, even if civilization is headed in that direction, it has an immeasurably long way to go. Must war remain with us until we are able to attain so millennial a state of the world? That would be discouraging indeed! It would mean, for all practical purposes, the complete surrender of the peace movement as such. The nations are jealous of their sovereignty, and there is no sign that they intend to abandon it. The spirit of nationality is in its youth, not in its decadence. Can nothing be done about war until the whole pattern of civilization is revolutionized? Is it nec-

essary to defer our hope of peace until the brotherhood of man is in a high degree realized? May it not be, rather, that so long as war remains all dreams of a higher order of civilization are vain?

Suppose, then, that we do not look so far ahead, but, taking our international world as it is, ask ourselves what is the *minimum* of attainment necessary to have a world from which war has been abolished. Without involving any structural change in the some sixty sovereign nations now on our planet, can we imagine them holding intercourse with one another on a basis of peace and order? If so, what do we see standing in the place where war now stands?

Clearly, we see a court, a world court, adjudicating disputes between nations by the application of law which the nations themselves recognize as law. Instead of going to war, we see the nations going to a court; just as in civil life, instead of settling their acute disputes with violence, we see neighbors going to their civil courts for justice. This is the goal, then, which all peace crusaders seek. The essential basis of world peace is a court of law and justice to which the nations are willing to resort instead of resorting to war. If there is a way to establish such a court and effectually to commit the nations to take their disputes to it instead of taking them to the battlefield, our problem is solved. We will have achieved world peace. War cannot effectually be displaced by anything but law—not by arbitration,

nor by cutting down armaments, nor by military alliances with nicely balanced power, nor by a political league of national units deciding disputes through diplomats, nor by regional military pacts, nor by overwhelming force concentrated at a single world center—but by law, universally recognized and embodied in a court vested with authority to apply it to international disputes.

It is safe to say that this answer to the question we are now asking will not be disputed by a single reader of these pages. If there be a reader holding a contrary opinion, he would do well to go no further, for this book is merely an attempt to show what such a court must be if it is to function in the place where war now functions, and how such a court may be established. If the end is mistaken, the means proposed will be irrelevant and futile, and no man should waste his time in reading a discussion of them. But if we are agreed on the goal, we may expect to find mutual help in discussing the way to attain it. Let us, then, set down our major premise thus: Law, freely established and accepted by the will of the nations, administered with juridical authority by a recognized court, is the direct antithesis of the war system and the constructive final aim of all peace effort.

Some, thinking superficially, may be disposed to say that the removal of the *causes* of war would do away with war, without law or court or any other

substitute for war. If you could remove all the causes of war, there would be no war. This, of course, is as true as it is impossible. Even if the causes of war that exist today were removed, there are bound to arise fresh causes of war tomorrow. Just as in our neighborly and community life there are innumerable causes of individual disputes for the settlement of which courts of justice are necessary, so, as long as there are sovereign nations, there will arise unforeseen causes of dispute among them. And as civil law exists to prevent individual neighbors from "settling" their differences by force, so international law administered by a court is desired to prevent nations from "settling" their differences by warfare.

III. AN ADEQUATE SUBSTITUTE FOR WAR

Our picture of the goal of all peace effort as a world court of law and justice must not be taken to imply a scorn for the methods of political diplomacy or arbitration or any other methods of informal conciliation which may be devised, but exactly the contrary. All such devices, whether permanent or extemporized, for settling international disputes out of court will, in all probability, be more in demand and more frequently used if a real court exists; just as in our communities vastly more controversies between individuals are arbitrated and compromised or otherwise adjusted out of court than in court. But

without an authoritative court of law an authoritative court of war is the only method of *compelling* a settlement of disputes between nations. Any program which fails to provide a real court with real law is not a genuine plan for world peace.

I say a *real* court. By that I mean a court with affirmative jurisdiction, that is, competent on the complaint of any nation to issue a summons to another nation to appear and defend its case. Under such jurisdiction the court would be competent to try the case even if the defendant nation did not appear, and to render a decision in accordance with the law. This would be no mere arbitration tribunal, but a juridical court of law, whose judgment would be final. The trial of any case would involve no nation not interested in the issues at stake. There would therefore be no commitments or entanglements in other people's affairs in which a given nation was not concerned. The United States, as every other nation, would go to court when it was interested in the lawsuit, and only then.

I say *real* law. By that I mean a definitely formulated code of established and accepted jurisprudence, as definite as the constitution of the United States which our supreme court equitably administers and whose provisions the states amenable to it know and have accepted in advance. It is altogether beyond reason to ask the nations of the world to commit themselves to any scheme for the compulsory

settlement of international controversies where the principles and standards under which the decisions will be made are unknown. By law alone can this unwillingness be overcome. Therefore the codification of international law must be put at the very foreground of our vision. A "world court" without a world code is not a real court; it is essentially an arbitration tribunal, no matter by what name it has been christened by its creators.*

The reader will be saying to himself that this picture is impressive enough, logical and self-consistent, but, he will be thinking, how can the bare existence of such a real world court bring to mankind any assurance that war will not be resorted to by the nations? The answer is that the *bare* existence of such a court will create no such assurance. The juridical institution which we have been describing in general terms, useful as it might be in reducing the number of conflicts between nations, is not by itself a solvent of the problem of international peace. Many, and I certainly am among them, would be quite unwilling for the United States to give adherence to such a court, even though it were constructed and constituted on the highest juridical principles, so long as war is recognized, as it has been through immemorial time, as a righteous and legal resort. With war in

* For a consideration of the time necessary to create an adequate code and the utilization of a *modus vivendi* during the interim, see chapter IX and page 75.

the offing no court can be supreme. War is now and always has been the Supreme Court of the nations. The setting up of an international court of law with the war system still entrenched in the world may help somewhat, but its processes of justice would move in continual jeopardy of an appeal being taken to the higher court of military force.

Obviously, therefore, it is required not alone that a court be set up and a code of law accepted and ratified by the nations but that the primary statute of the code shall make war a public crime, and that no other statute or article of the code shall be in conflict with this basic provision. Unless war, in any form and under any guise, is outlawed in the very structure of the juridical system by which the nations are brought together for a pacific settlement of their disputes, it is hopeless to ask any of the more powerful nations, including the United States, to obligate themselves to such a system; or if they do affix their signatures it is with mental reservations amounting almost to compulsory bad faith, such as we shall see in chapter XIV obtains in the case of the great powers signatory to the covenant of the league of nations.

The reluctance of the United States to undertake the obligations inherent in any world scheme that has yet been proposed, has been due, no doubt, in part, to those motives usually ascribed to us by our critics —party jealousy, national selfishness, inordinate caution and such like. But these motives do not

embrace the deeper reason of our "irreconcilability." America's conduct has not been basically ignoble. By a sound instinct our people have been unwilling to commit this nation's destiny to any entanglements likely to draw us into the war system of Europe. So far no proposal has come to us which would not inevitably so entangle us. Any proposal for international peace must definitively leave war altogether on the outside, if it is to be considered a genuine peace proposal. This must be covered by the primary statute of the code itself.

But still the realistic-minded reader is not satisfied. And his dissatisfaction is justified. To him the picture we have thus far sketched is admirable enough, as a picture, but the juridical system which it envisages, he says, has no dynamic in it. Where is the obligation for a nation to take disputes to this court, or to respond to the summons of the court on the complaint of another nation? Does not the mere writing of a statute in a code declaring war a crime outlaw war only on paper? The nations have their own way of treating scraps of paper. Clearly the breath of life and of power must yet be breathed into the system. There is only one way imaginable by which this can be done, and that is for the nations solemnly to pledge one another, in a universal treaty, that they renounce forever and unconditionally the immemorial right to resort to war for the settlement of international disputes, that they agree to accept

the jurisdiction of the court in all disputes covered by the code or arising under treaties, and that they will accept in good faith and abide by the decisions of the court in all cases.

It is the plighted word of the nations, backed by the united public opinion of the world, that can give reality and power to a court of world peace. Bayonets cannot do it; military alliances cannot do it; no "international police force" can do it; a score of Locarnos spotting the world cannot do it—these military arrangements supplant and vitiate the very genius of a world court as a court of peace. A pacific world can rest upon no other foundation than the plighted honor of the nations and a decent respect for the good opinion of mankind. This statement, I know, is at this point an *obiter dictum*, but I shall return to it in later pages for a reasoned consideration.

In this chapter we have begun at the end, the goal, and, so to speak, have been working backward. Our purpose has been to find as wide a basis of agreement with the reader as possible. It is in the goal of the peace movement that most of our clashing opinions are reconciled; the clash comes as to the means and the path by which the goal may be attained. Nevertheless, it is of the highest importance that the goal shall be clearly envisaged, else we shall be caught in endless futility and ineptness in our devotion to particular means. In setting forth a real world court

of justice administering recognized law, as the objective of all peace striving, we have touched the core of the proposal to outlaw war. The basic difference between this proposal and other proposals is not due to any difference of opinion as to a court of law being the direct antithesis of war and the ultimate desideratum in any plan for permanent peace; the difference consists in the fact that outlawry is the only proposal *that builds upon that desideratum.*

The genius of the outlawry proposal is its thoroughgoing juridical character, as contrasted with all plans for political or diplomatic associations or leagues, with all military alliances, with all arbitration treaties, and with all other schemes, however ingenious and complex, which fall short of creating a world court of peace, standing on its own feet, and lifting its head supreme above every other agency which, for whatever reason, the nations may, from time to time, see fit to create. If an international court such as we have here described is the minimum but adequate goal of world peace, our task as architects of peace, however difficult, will at least be more simple if we keep that end always in mind. We shall be saved from futile enthusiasm for mere irrelevancies. For we shall have need to consider in rearing our peace structure only those processes and materials which contribute, as means, toward the establishment of the end we seek—a juridical institution of peace.

Chapter III

INITIATING THE OUTLAWRY OF WAR

THE proposal to abolish war by setting up in its place a real court in which disputes between nations shall be settled by the application of a code of international law whose basic statute makes war a crime, is not an ideal suspended in mid-air, but a practical program whose successive phases are anticipated and provided for in the proposal itself. It takes hold of the problem of war without diplomacy, without euphemisms, with no thought that ingenious and protracted strategy is needed to solve it. Outlawry frankly and squarely confronts war as an enemy which deserves no quarter, as it asks none, an enemy which mankind has come to regard as the worst foe of the most precious things in civilization, and it boldly and openly declares that there is only one way by which the nations can now or in the long hereafter be freed from war, and that way is simply to quit resorting to it.

Such a statement sounds at first like a truism. It would indeed be a mere truism were it not that it stands in sharp contrast to the innumerable peace "plans" which presuppose this or that "flank movement" against war, this or that ingenious device for

surprising Mars when he is asleep, and weaving over and around him a binding network of Lilliputian threads. Outlawry has definitely and consciously abandoned all subtle and indirect methods of attack, insisting that Mars is stronger than the best of them, or the total of them, and will surely break his apparent bonds when the crisis comes. *It chooses deliberately to make a frontal attack upon war in the open, in the light of day, without compromise, without strategy.*

I. TAKING THE LEAD

In the previous chapter we followed the method of beginning at the end and working back toward the beginning. In this chapter we shall begin at the beginning and work forward to the end. In that chapter we set up the goal which all peace crusaders of whatever school agree upon as their common objective, and considered carefully and logically what means were essential and relevant to the attainment of that goal. In this chapter we assume the goal, and ask, practically, how we shall lay hold upon the means for its realization. How would the outlawrist proceed in making his frontal attack upon war? His answer is simplicity itself.

First, he says, let us find one nation that is willing to abandon the old ways of war and to adopt the ways of law on the single condition that the other nations will join with it in doing so. Let that nation

so declare itself, and call upon other nations to respond by making similar declarations. It is not implied that this initial nation proposes to outlaw war single-handedly, regardless of what other nations may do. One nation alone cannot outlaw war. The initial declaration by a single nation is no non-resistance gesture, nor does it imply a purpose to abolish war by example. It is simply a way of serving public notice on the world that that nation is ready to abandon war *if the others will join it in so doing.* War can be abandoned and outlawed only by *international agreement.* The initial declaration points toward such an international agreement, and opens the path thereto.

The peoples of the world are all held in a state of inertia and fear with respect to the war system. What is needed to break this inertia and dissipate this fear is for a single nation to make a bold, frank pronouncement of its desire to enter into an agreement with the rest of the nations to outlaw the war system. Such a declaration, made by any nation whatever, large or small, could not fail of results. Denmark, which recently took advance steps toward dispensing with its military system, could make it. Switzerland or Sweden or Belgium could make it. But a declaration by any one of these nations, with their inferior strength or their protected neutrality, would hardly carry the impressive influence which leadership in so revolutionary a movement demands.

Great Britain's voice, or that of France, would carry round the world; but it is perhaps too much to expect that any of the great nations of Europe with their enormous military establishments and proud military traditions can rise to the level of independent leadership in a proposal to abolish their war offices. Their people groan under war burdens and suffer the anguish of its desolations, but it is difficult to hold before the eyes of their leaders the wavering vision of war's utter abolition.

Germany could make the declaration, and in view of the world-wide belief that it was her militarism which caused the great war, a pronouncement of her willingness to abandon the war system and to live in peace with her neighbors under a system of law would electrify mankind. Yet even here there would arise a cynical suspicion that her peace proposal was prompted chiefly by the helplessness of defeat, or by the purpose of lulling other nations into a false sense of security. In all these nations the people themselves desire peace. They hate war, and would welcome any hopeful leadership that promised release from their age-long subjection to the war system.

There is one nation, however, whose position, whose power, and whose tradition foreordain her to this rôle of leadership in the direct abolition of war. That nation is the United States. Here is the only nation that came out of the great war with no ends

to serve save the single moral end for which her sons were told they were fighting, namely, to end war. Her sole stake in the victory was the attainment of the moral end for which she helped to win it. The eager, passionate sacrifice which America made, and stood ready to complete even to the last full measure of devotion, can be rewarded in no sordid coin of political or economic advantage, but only in the imponderable coin of moral accomplishment. With hands clean of any spoil, and with her war motives unsuspected of imperialistic ambition, America would seem to be in a peculiar position to take the initiative in a world-embracing crusade to abolish war as an institution for the settlement of international disputes.

II. AMERICA'S SPECIAL RESPONSIBILITY

Moreover, there is a special responsibility resting upon the United States in view of her rejection of Europe's plans put forward in the name of peace. Our country's position in the peace movement is an unenviable one. A kind of moral depression is caused by the fact that there can exist a world organization, in the name of peace, in which America is not an ardent and untrammeled participant. To make this confession does not imply that America acted wrongly in declining to go into the league. On the contrary, from the standpoint of effective peacemaking, I hold that it was a great day's work when this country decided not to be drawn into the Euro-

pean system. But no morally sensitive people can find satisfaction in a negationist attitude. To maintain such an attitude is not only to invite the scorn of other peoples, but, what is worse, to justify our own citizens who are enamored of the European system in their drastic condemnation of their own country. Take, for example, these words uttered editorially by a leading American religious paper:

> So long as our country stays out of the league, it is running away from obligations and leaving other nations to fight our battles for us. The one chief thing the league is doing is making a safe and peaceful world—making it *for us*, and we are standing aloof, letting the other nations do it and we are not helping. The world court, the protocol, individual stands as against Italy at Corfu, disarmament conferences—all these are but steps the league is taking toward making a warless world, which will be as heaven-born a boon for us as for any other nation—and we are letting the league do it without our help. It is just as though we had let the allies fight our battle for us through the war and we not helping!

Or consider a recent address delivered by Dr. Nicholas Murray Butler before the League of Nations Non-partisan Association in which he likened the United States, in the matter of foreign policy, to "a dangerous derelict afloat on the seas of international intercourse, and plying straight across the path of every ship that sails laden with the precious cargo of international friendship and accord."

Utterances such as these, I believe, wholly mis-

represent the American spirit and are without justification in the course America has up to this date pursued. They are untrue both as a description of what is happening in Europe, and as an interpretation of what has happened in America. Time is vindicating the wisdom of the decision made by the senate and confirmed by the people of this nation. It was not a decision to abandon the cause of world peace. It was no act of withdrawal from the fellowship of other nations in the establishment of an orderly world. What America did was to reject the league system as either an adequate or a promising answer to her war-time idealism. On the part of some this rejection was due to intelligent insight, on the part of others to traditional instinct, but it was not chiefly due to the ignoble motives of national selfishness and irresponsibility.

Yet such reflections upon America's moral character will in the end be justified if, rejecting Europe's proposal, America proves to be lacking in intelligence and moral initiative to make a sound peace proposal of her own. Then indeed there will be ample reason for our citizens "hanging their heads in shame" at their country's "ignoble" course. For the salvation of her own soul as well as for the sake of world peace, this nation must find some way to express her willingness to make radical, if effective, commitments on behalf of peace, equal to and even in excess of those which any other nation has yet made.

III. SENATOR BORAH'S RESOLUTION

Happily the ground-work of such a constructive program is already being laid, both in official procedure and in public sentiment. Senator Borah's resolution announcing and defining the desire of the United States to abandon the war system in favor of a system of world law, first introduced in the senate in February, 1923, is still before that body. The text of the resolution is as follows:

Whereas war is the greatest existing menace to society and has become so expensive and destructive that it not only causes the stupendous burdens of taxation now afflicting our people but threatens to engulf and destroy civilization; and

Whereas civilization has been marked in its upward trend out of barbarism into its present condition by the development of law and courts to supplant methods of violence and force; and

Whereas the genius of civilization has discovered but two methods of compelling the settlement of human disputes, namely, law and war, and therefore, in any plan for the compulsory settlement of international controversies, we must choose between war on the one hand and the process of law on the other; and

Whereas war between nations has always been and still is a lawful institution, so that any nation may, with or without cause, declare war against any other nation and be strictly within its legal rights; and

Whereas revolutionary war or wars of liberation are illegal and criminal; to wit, high treason; whereas, under existing international law, wars between nations to settle disputes are perfectly lawful; and

Whereas the overwhelming moral sentiment of civilized people everywhere is against the cruel and destructive institution of war; and

Whereas all alliances, leagues, or plans which rely upon war as the ultimate power for the enforcement of peace carry the seeds either of their own destruction or of military dominancy to the utter subversion of liberty and justice; and

Whereas we must recognize the fact that resolutions or treaties outlawing certain methods of killing will not be effective so long as war itself remains lawful; and that in international relations we must have, not rules and regulations of war but organic laws against war; and

Whereas in our constitutional convention of 1787 it was successfully contended by Madison, Hamilton, and Ellsworth that the use of force when applied to people collectively, that is, to states or nations, in the execution of a judicial decision, is unsound in principle and would be tantamount to a declaration of war; and

Whereas we have in our federal supreme court a practical and effective model for a real international court, as it has specific jurisdiction to hear and decide controversies between our sovereign states; and

Whereas our supreme court has exercised this jurisdiction without resort to force for one hundred and thirty-seven years, during which time scores of controversies have been judicially and peaceably settled that might otherwise have led to war between the states, and thus furnishes a practical exemplar for the compulsory and pacific settlement of international controversies; and

Whereas an international arrangement of such judicial character would not shackle the independence or impair the sovereignty of any nation, and would not involve or affect

the right of self-defense against invasion or attack, such right being inherent and ineradicable, but should not be a mere subterfuge for the traditional use of war: Now, therefore, be it

Resolved, That it is the view of the senate of the United States that war between nations should be outlawed as an institution or means for the settlement of international controversies by making it a public crime under the law of nations and that every nation should be encouraged by solemn agreement or treaty to bind itself to indict and punish its own international war breeders or instigators and war profiteers under powers similar to those conferred upon our congress under Article I, section 8, of our federal constitution which clothes the congress with the power "to define and punish offenses against the law of nations"; And be it

Resolved further, That a code of international law of peace based upon the outlawing of war and on the principle of equality and justice between all nations, amplified and expanded and adapted and brought down to date should be created and adopted.

Second. That, with war outlawed, a judicial substitute for war should be created (or, if existing in part, adapted and adjusted) in the form or nature of an international court, modeled on our federal supreme court in its jurisdiction over controversies between our sovereign states; such court shall possess affirmative jurisdiction to hear and decide all purely international controversies, as defined by the code or arising under treaties, and its judgments shall not be enforced by war under any name or in any form whatever, but shall have the same power for their enforcement as our federal supreme court, namely, the respect of all enlightened nations for judgments resting upon open

and fair investigations and impartial decisions, the agreement of the nations to abide and be bound by such judgments, and the compelling power of enlightened public opinion.

This resolution has exerted a silent but cumulative stimulus upon public opinion to consider what this proposal means. The idea of committing the United States to a program of the utter abandonment of the war system on the sole condition that the other nations join it in doing so, was too new to be pressed officially until the springs of public opinion could be opened by discussion and education. In the four years since its initial introduction in the senate the tide of public opinion has been steadily rising to the level of demanding its adoption.

The program of this Levinson-Borah conception of isolating the institution of war from all controversies over other international matters, and dealing with it directly, is in the process of revolutionizing the peace thinking of America. With the old controversies steadily losing their savor in public interest, and with the outlawry proposal steadily moving toward the focus of attention, there is ample ground for regarding Senator Borah's latest introduction of his resolution as a real parliamentary act with expectation of results. The conscience of the nation is becoming disquieted over the hesitation of our government to assume a constructive rôle in peace time on behalf of the sublime ideal for which we were

willing to pay so infinite a price in time of war. That ideal will remain suspended in mid-air, a mere dream, a hope, a yearning, until some nation, prompted by the intelligent and determined purpose of its people, breaks the crust of acquiescence in and subservience to the war system by announcing to its neighbors all around the world that it will abandon the use of war for the settlement of international disputes if they will. This is the first act in the august enterprise of outlawing war. May America see and seize her opportunity to perform that act!

IV. THE RESPONSE OF OTHER PEOPLES

What would be the reaction of the nations to such an initial declaration by the government of the United States? We need have no illusions as to the obstacles which would stand in the way of securing similar declarations in response to America's invitation, but these obstacles are likely to be greatly exaggerated. There are many signs that the idea of *abandoning war* is not any longer beyond the comprehension of the nations. I will refer to one fact which is significant enough to afford a glimpse into the possibilities of the situation if the nations were once confronted by the outlawry proposal. In the Locarno treaties, Germany yields forever her claim upon Alsace and Lorraine, but refuses to yield her claim to upper Silesia and the eastern territory taken from her by the treaty of Versailles. She declares

that her eastern boundary is drawn unjustly, and that she will use every pacific measure available in the future to recover her lost territory, but she specifically agrees *not to go to war about it.*

Here is no minor dispute, but a major dispute, involving interests which to Germany are as great and as vital as any of those interests which the nations usually except from their arbitration treaties—so-called non-justiciable questions, questions of vital interest and questions of national honor. It is not correct to say that Germany has "outlawed" war on her eastern boundary, for war cannot be outlawed piecemeal; its presence as an institution in the rest of the world puts in jeopardy any such compact as this covering a single spot of the world. But it is correct to say that the *attitude* of Germany in respect to this dispute is essentially the attitude which, if it were universalized, would spell the utter outlawry of war. And the fact that Germany, on her own initiative, offered to enter into such a compact suggests strongly what might be expected on a larger scale if the nations were confronted with a genuine challenge to abandon the war system altogether.

But in considering the probabilities of the situation consequent upon America's announcement, it seems clear that that act would produce several important effects. First of all, there would be an immediate disclosure of those nations which are in the grip of militarism, as distinguished from those which are

not. Secondly, as the nations began to make their favorable response and to take their stand with the United States on the side of law and against war, there would be born a new world public opinion which would be progressively augmented as each additional state joined in the outlawry declaration. This body of public opinion would exercise a steadily increasing power upon any reluctant nations, whose blind resistance would be gradually weakened by each desertion from their group. Third, in those nations whose war offices blocked a favorable response to America's declaration there would be set into operation an unceasing and irresistible pressure from their war-burdened people, to which in the end the military-controlled governments would be compelled to yield or suffer their own overthrow. In the nations with free parliaments the procedure in making response to America's declaration would be simple and orderly, and in all probability prompt, the popular yearning finding normal expression through the democratic parliaments.

But let us suppose the worst. Let us be pessimists in our forecast of the way the nations will react to America's announcement. Suppose that the announcement is greeted coldly, that it falls flat, awakening responses from only a few nations, or from none at all—an incredible eventuation, but we are supposing the worst. Could there be any more vivid lighting up of the hypocrisies of peace diplomacy, of

the deceptions which lie hidden in all the peace rhetoric of our international statesmen, of the thralldom by which the nations are chained to the war system? Can any one imagine a more decisive test to apply to the good faith of the nations than for one of their number, an affluent, powerful, honored nation, like the United States, to say to them all: "Let us waive for the moment all our talk about the league, the world court, arbitration, disarmament, security, the 'Geneva atmosphere,' the 'sunshine of Locarno,' and let us consider what we are actually willing to do about the barbarous institution of war; we, on our part, are ready to have done with it forever, if you are!"

The value of a negative result of such a test would only be exceeded by that of its joyous acceptance. A proposal to outlaw war would be a tremendous success in its very failure. A negative result would richly justify making the experiment. The high-flown peace talk of the diplomats would then be known for the mere froth that it would thereby be proved to be. Such a result, moreover, would have not merely an academic value, but would carry with it a re-definition of the peace problem in terms of reality, instead of, as it is now conceived, in terms of trustful delusions. And it would by one stroke reveal and unify the sincere advocates of peace the world over.

But reasoning upon the hypothesis of total failure

is purely academic. Such a result is only imaginable. We know that the peoples are all war-weary and yearning for some peace proposal to be presented to them, "simple and understandable," and utterly free from the obfuscating complexities necessarily inherent in any peace plan devised within the war system. To think that they would reject such a yes or no proposal is, it seems to me, to betray an ignoble conception of mankind.

Chapter IV

A TREATY TO OUTLAW WAR

WHEN a substantial number of parliaments have made their declarations, it is contemplated that an international conference of all civilized nations will be called by America or by any other nation, or jointly by several nations, or in any other manner, for the purpose of formulating and adopting a general treaty pledging the nations to the abandonment and outlawry of war; and providing for a convention of the leading jurists of the world and other competent persons, representing all civilized nations, to formulate and codify the international laws of peace.

I. A WORLD CONFERENCE TO OUTLAW WAR

Let us try to visualize such an international conference. It will be called for the purpose of outlawing war, *and for no other purpose.* The most competent representatives of the nations will be present. They will be sent by their governments after a thorough discussion in their respective parliaments of the resolution in response to that adopted by the congress of the United States. Public opinion in each nation will have been profoundly stirred by the

prospect of the nations joining together in a universal treaty whose effect will be to shift the whole structure of international relationships from the age-old basis of war to that of law. The conference sits at some great world-center. Its doors are open. The press of all nations is present. The whole world is "listening in," as if by what Mr. Melvin V. Oggel has called "a world-encircling radio system." With no political or diplomatic technicalities to obscure the issue, the simple question is put: Shall we condemn and abandon the institution of war for settling our disputes, and establish a world court of law in its place? Who will dare to answer No to such a question? Mr. Oggel asks vividly: "What delegate will brave his nation's tax-payers and his nation's mothers listening in on the international radio, to argue against the branding of war as a crime; against the constituting of a real court of justice in place of this court of war which settles nothing and unsettles everything; against the equipping of that court of justice with a peace code which insures a square deal to all nations, small and great?"

Such an international conference will afford the people for the first time in history a chance to express their will and to act against the war system. Whether the treaty adopted there should be taken back to the nations to be ratified by popular referendum or by open parliamentary action is a detail for each nation to decide, but there must be no

compromise of the principle of absolute publicity. All the springs and channels of publicity must be kept open—not only kept open but aroused and quickened. This must be in very truth an "open covenant openly arrived at." The outlawry of war is a people's movement. There are to be no false hopes, no illusions of power residing in scraps of paper, no disillusionments arising from the discovery of unsuspected interpretations of ingeniously drawn documents. The civilized peoples of the world are to pledge their honor not to go to war over their disputes, but to accept the judgments of the court of international law. The people must make the peace, because the people are to be its guarantors.

Outlawry thus roots itself in the very soil of the people's will and the people's honor. It is the only program of international relations which puts the power of peace or war in the hands of the people. A proposal, which has had some popularity in certain circles of American politics, to take from congress the power to declare war and put it to popular vote by means of a referendum, is a proposal for the people to vote on a war after it has arrived. In the nature of war such a plan is a mockery. But the outlawry proposal puts the power of peace or war in the hands of the people when there is no war in sight, and they are given opportunity to say whether they desire to continue the war system or will submit their disputes to the judgment of a real court of

justice. No war machine will be needed to "enforce" a peace thus created by the direct plighted word of the people.

II. AN INTERNATIONAL TREATY

Is it possible thus far in advance of the assembling of a world conference to outlaw war, to conceive what form the general treaty for that purpose may take? It ought not to be impossible, in dealing with a concept of world peace whose grandeur is its simplicity, to draft a treaty in comparatively few words which would suffice as an initial basis to carry the principles of outlawry into world-wide execution. The Borah resolution is appropriately framed for registering the will of the United States senate, and through it the American people, to outlaw war by international treaty. Rightly enough, it does not undertake to formulate the terms of such a treaty. The international conference called for that purpose will draft a treaty of its own. But for purposes of suggestion, Mr. S. O. Levinson recently formulated a miniature treaty which has the merit of crystallizing and illuminating the proposal to outlaw war. His draft is as follows:

DRAFT TREATY TO OUTLAW WAR

We the undersigned nations of the world hereby condemn and abandon forever the use of war as an instrument for the settlement of international disputes and for the enforcement of decisions and awards of international tri-

bunals, and hereby outlaw the immemorial institution of war by making its use a public crime as the fundamental law of nations. Subtle and fatal distinctions between permissible and nonpermissible kinds of war are blotted out; the institution of war is thus outlawed, as the institution of dueling has been outlawed; but the question of genuine self-defense, with nations as with individuals, is not involved in or affected by this treaty. In order to provide a complete and pacific substitute for the arbitrament of war, we hereby agree to take immediate action for the equipment of an international court of justice with a code of the laws of peace, based upon equality and justice between all nations. With war outlawed and the code approved and ratified, the court shall be given jurisdiction over all purely international disputes as defined and enumerated in the code or arising under treaties, with power to summon in a defendant nation at the petition of a complaining nation and to hear and decide the matters in controversy. We hereby agree to abide by and in full good faith to carry out the decisions of such international tribunal. The judicial system thus established, being a complete substitute for the outworn and destructive war system, will enable the nations to adopt far-reaching and economically vital programs of disarmament.

This Levinson treaty reads more like Lincoln's emancipation proclamation, or our fourteenth amendment abolishing slavery, than the usual document put forward in the name of peace. With profound relief one must turn from reading, for example, the long and involved text of the Locarno pacts, or the covenant of the league of nations, or the Geneva protocol,

to so brief and lucid a document designed to emancipate the nations from the thralldom of war. Those who assume that an end so lofty and revolutionary as the abolition of war can be attained only by ingenious and highly technical and subtle devices of diplomatic craftsmanship will turn from a simple formulation like this with a certain contempt because, forsooth, it bears no marks of the war offices or the chancelleries to give it caste. It sounds too sensible to be sound! But it is upon the simplicity, concreteness and directness of their proposal that the advocates of the outlawry of war base their belief in its essential statesmanship. It requires no expert in international law to explain it. It embodies one of those great luminous concepts which can be grasped by a sage or a child but which elude the mind accustomed to the windings and indirections of diplomatic thinking.

The basic reason for the simplicity and effectiveness of this treaty as contrasted with other proposals is that they move on the political plane while the outlawry proposal moves wholly on the juridical plane. Political arrangements for the control of war or the regulation of war or the prevention of war are all haunted by the presence of war in the background. But in this juridical meeting of the wills of the nations, war itself is cast outside the pale; it is abandoned forever, and the nations by treaty pledge their honor to the judicial settlement of their

disputes. There is no supreme court of war standing in the shadow to take the case from this court. The court is the end—it would be a *supreme* court! The functioning of any league or other political or diplomatic agency would take place *on this side of the court*, not beyond the court. The juridical institution founded on the basis of the outlawry of war would be superior to any and every political institution whatever, instead of, as in the European system, subordinate to the league of nations.

What kind of disputes would be submitted to this court? According to the draft treaty, "purely international disputes." It is an *international* court. It deals with international disputes. Disputes over domestic policies of the nations are not within its jurisdiction—even where treaties exist covering domestic questions the court's function is limited to interpreting the language of the compact.

Who decides whether or not a suit brought by a complaining nation is within the jurisdiction of the court? The court itself decides its jurisdiction in each specific case.

What determines the court's decision as to whether it has jurisdiction? It is determined by the code. The code defines the jurisdiction of the court. If the suit is of such a nature as not to fall within the scope of disputes defined or enumerated in the code, or arising under treaties, the court will refuse to hear the case for lack of jurisdiction.

But is not the line between "purely international" disputes and disputes over "domestic" affairs a difficult one to draw? Assuredly it is. Between disputes that are obviously international in character and those involving the sovereign right of a nation to attend to its own business, there is a considerable field of possible controversy wherein it is doubtful whether the dispute is international or domestic.

Who, then, decides which disputes go into the code as purely international? The makers of the code decide.

And who are the makers of the code? The nations themselves make the code. The approval and ratification of the code are part of the treaty outlawing war. *War is not finally outlawed until the code is ratified.* In renouncing the right to go to war, the nations know in advance what is to be the scope of the jurisdiction of the court to which they will commit the ultimate settlement of their international disputes. It is not a court with a roving jurisdiction, not an arbitration tribunal, as any so-called court in the present chaotic state of international law must be, but a real court with an affirmative jurisdiction defined and limited by an accepted code of international law.

And finally, would this code be a rigid and unalterable system of law, holding the nations in a straightjacket for all time, or would there be a way provided for its amendment and enlargement with the grow-

ing wisdom of mankind and the increasing willingness of the nations to refer to impartial adjudication matters over which they may be as yet unwilling to surrender their sovereign control? The answer is that in adopting the code the nations will provide for its periodic revision, bringing it from time to time down to date. No doubt the code as first drafted and accepted by the nations will be the bare minimum of principles of equity and specific statutes which the nations, unaccustomed to a world of peace, will find themselves able to agree upon. Throughout the years the code will steadily be enriched and enlarged by experience. It will prove to be the "growing point" of the new world of peace, reflecting in its perennially widening scope the sense of security and the love of justice which will increasingly characterize a world order from which war has been banished.

Disputes arising under international treaties are included in the jurisdiction of the court, a treaty having the character of law for those nations which are party to it, and being international as to its interpretation and construction. It is probable that in a world with war outlawed one of the first and most rapid developments would be the multiplication of treaties between nations on specific matters over which there has been or is likely to be friction. These treaties would all automatically come within the jurisdiction of the international court for construction and interpretation.

III. ABSOLUTE BAN AGAINST WAR

The proposal to outlaw war, then, a careless reader might conclude, applies only to *certain* disputes between nations, and not to *all* disputes. Let us hasten to correct such misapprehension. The outlawry of war applies to *all* disputes between nations, with no conceivable exception. All international disputes would, like all Gaul, be divided into three parts:

a) Disputes defined or enumerated in the code. Concerning these the nations, when adopting the treaty outlawing war, agree to submit them to the court, and to accept the court's decision.

b) Disputes arising over the construction and interpretation of treaties. The nations agree to submit all such to the court and faithfully to accept the court's decision.

c) Disputes neither covered by the code nor arising under treaties. Concerning these the nations all agree that *they will not in any event go to war over them!* War is thus absolutely and forever abandoned as an instrument for the settlement of any disputes between nations, whether these disputes lie within the scope of the code or outside the code, whether they arise under treaties or are not covered by treaties, whether "justiciable" or "non-justiciable," whether matters of national honor or vital interest or matters of lesser consequence.

In the "c" class of disputes there is disclosed one of the most important principles involved in the

proposal to outlaw war. All disputes lying outside the jurisdiction of the court would be settled, as all such disputes are settled in civil life, out of court. Here would be available the good offices of other nations, or of the league of nations, or any other conciliating process. Or the dispute would be left to time to settle—or not settled at all! Any attempt to provide for the compulsory settlement of *all* disputes, of whatever nature, has in it the seeds of war more than of peace. With clairvoyant insight and wisdom the proposal to outlaw war steers clear of that rock of disaster, *but retains the absolute ban against war.*

Our consideration of this point will reveal the shallowness and dangerousness of the current movement here and in Europe to persuade the nations to sign treaties in which they would agree to submit to arbitration all disputes which cannot be adjusted by direct negotiation. This would put one nation at the mercy of another in matters in which another nation has no right to interfere. There are some questions which, in the present state of the world, or in any conceivable state of *this* world, cannot be decided by a tribunal of any sort. In the case of the United States we have only to think of tariffs, and immigration, and the Monroe doctrine, and prohibition, and the allied debts, to see how a meddlesome nation, *under cover of our pledge to arbitrate any dispute whatsoever,* could provocatively precipitate

an issue which was none of its business—in any sense which an independent country like the United States would acknowledge—and then demand that we go to arbitration with it. Illustrations similarly involving Great Britain, France and other nations abound. Thus imposed upon, and taken advantage of, any self-respecting nation would be driven to repudiate its arbitration agreement without hesitation and without compunction.*

Compulsory arbitration thus carries more dangerous than beneficent possibilities. Arbitration is by its nature an *ad hoc* device. It is useful where it is useful. But it cannot without grave danger be spread like a blanket over all possible future controversies. Compulsory arbitration may be an earnest enough attempt to get at the problem of eliminating war, but it is a wooden horse potentially carrying Mars himself. Instead of binding the nations to obligatory arbitration of *every* kind of dispute, let the nations bind themselves not to go to war over *any* kind of dispute, and let them provide a juridical mechanism for the compulsory adjudication of such disputes as fall within the code of law which the nations themselves have created and accepted.

The principle of *compulsory* or *obligatory* settlement of disputes, whether by an arbitral or a judicial tribunal, cannot be justified, either in civil or inter-

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* See footnote, page 147.

national disputes, except as the compulsion or obligation is limited or defined by law. And even with a code of law, no international court could hope to exercise its jurisdiction with judicial authority while war is legal. It should therefore only be clothed with jurisdiction when war is outlawed.

IV. THE WILL OF THE PEOPLES

Perhaps I have been drawn too far into the discussion of the contents of the outlawry treaty and the nature of the court which such treaty is designed to establish. This will have fuller consideration in later chapters. Here our main purpose is to consider the mere procedure of securing the treaty. Our present subject is one of technique. And before leaving this question of procedure I must emphasize a basic presupposition upon which the outlawry proposal rests, namely, that war cannot be outlawed except by the direct participation of the *peoples* of the nations. A change in the habits of the nations so revolutionary as that of establishing law in place of war can be accomplished only by measures which go to the very sources of power and good faith in all nations. The means must be commensurate with the end.

War cannot be outlawed by the indirect proxies of the peoples. There is no agency that can act for the nations in this business. The thing is too big, too far-reaching, too intimate, to be done by a mere

conference of diplomats, such as the assembly of the league of nations, or by any other gathering. It calls for the creation of a new international law of peace, involving the condemnation and elimination of the institution of war. It can be done, if at all, only by direct action of the nations themselves. The less extra-national mechanism is used, the better. The outlawry of war cannot be imposed upon the nations from without, nor can it be accomplished for the nations by perfunctory action of their representatives. Its basis is the will of the peoples. If the people do not will it, it cannot be. That will must be intelligently registered, if not by a specific plebiscite, then by some popular campaign in which the public will shall be intelligently and patently manifested in support of the action of each nation's parliament.

The more vitally and spontaneously the movement springs from the hearts of the people, the more secure and permanent will be its results. There must be no illusions about things that look good on paper but lack support at the sources from which all just and enduring policies of governments derive their power. Nor would any government wish to adopt so revolutionary a policy without the expressed approval of the overwhelming majority of its people.

This realistic emphasis upon the popular will is the indispensable basis of any earnest attempt to abolish war. The great handicap upon the peace movement is that it has always been in the hands of

the experts, the diplomats, the foreign ministers, and —save the mark!—the war offices. The *people* have never had a chance at the issue of war or peace. Nor is the problem one of educating the people to prefer peace and to elect peace. Surely it would seem as if mankind had at last reached a point in its education, and in its experience of war, where it is ready for specific and direct action, ready to make some great and fundamental decision, and only waits for its leaders to offer a sound and simple technique by which to make its decision effective.

If the peoples of the world can once be confronted with the war question in a form so unencumbered by political and other irrelevant implications that a straight yes or no answer can be given, who can doubt what their answer will be? It is the genius of the outlawry proposal that it does create a yes or no situation with reference to war. It proposes that the nations shall condemn and renounce forever the use of war for the settlement of international disputes; that they shall do so in a universal treaty; that this treaty shall also provide for the equipment of an international court with a code of the laws of peace and with jurisdiction by which it may summon an offending nation to its bar on the complaint of an offended nation, hear the case and render its decision; and that each nation signatory to the treaty shall agree in full good faith to abide by the decision of the court.

V. THE FALLACY OF "STEPS"

Is this a far-away goal? Does it require the taking of many tiny, cautious steps through a long period of years before it can be substantially realized? Is it the distant, divine outcome of a slow process of evolution? The outlawrist says, No. The outlawry of war is not an evolution; it is an act. It requires no precedent "steps" by way of America's entering the league or the league court, or by way of disarmament or arbitration. Such steps are essentially irrelevant to the outlawry of war. They belong, in the last analysis, to the age-old system of diplomacy and alliances and schemes for "preventing" war. And by leaving the institution of war unchallenged in the shadow, they are doomed to end as they have always ended—by Mars again stepping out of the shadow and asserting his ruthless supremacy. *After all the so-called "steps" have been taken, the procedure for outlawing war will still be precisely the same as if war were to be outlawed now.* It would be no more easy to do it then than to do it now. It might be more difficult. For with a façade of peace again built up mankind would more easily yield to the illusion of peace, and consider action unnecessary. If eventually, why not now? The will is itself the readiness.

Professor John Dewey has stated this principle with the lucidity and with the impatience of a mind that sees clearly the self-deception which is per-

petrated upon the peace conscience by the doctrine of "steps." In a debate with Professor Manley Hudson on the world court, Professor Dewey said:

I should prefer to have said nothing about this matter of steps, steps, steps. How long have we been taking steps to do away with war, and why have they accomplished nothing? Because the steps have all been taken under the war system. It is not a step that we need, it is a right-about-face; a facing in another direction. And when we have committed ourselves to facing in another direction we have all future time to take steps in. No advance in human history that was of any great importance was ever made by taking steps along old lines. Think of that proposition. Taking steps along old lines aids in perfecting principles and methods that are already established, but they never initiate the great steps in human progress. These always come by finding a new method of attack upon the problem. The telephone was not arrived at by taking steps to perfect our vocal organs till we could shout more loudly. The self-binding reaper was not an evolution step by step out of the old hand cradle. The locomotive did not originate by improving our breed of horses, any more than the use of animals in transportation grew by steps that we took to improve our legs. The internal combustion locomotive did not come by steps taken to improve the steam locomotive. I submit to any engineer that no significant step forward in mechanical improvement has ever occurred except by finding a new method of approach to get around the obstacles which had piled up and blocked old methods. And the same is true of all social progress. I believe the fallacy which most paralyzes human effort today is the idea that progress can take place by more steps in the old wrong

direction. We can, if we please, take steps to perfect the international law and international courts under the old system, but let us not delude ourselves to think that in improving details of this system we are taking a single step for the elimination of the war system of the world.

Of the procedure following the adoption of the treaty by the international conference, I do not need to speak in any detail. The treaty provides for the calling of an international convention of jurists and others to formulate a code of international law. I will devote a chapter to this problem further on. But it is important in considering procedure not to allow the code to be isolated in our thought from the fundamental agreement outlawing war. *War cannot be outlawed fully until the substitute for war—a court of recognized law—is established.* This, as we shall see, is not so formidable an undertaking as it is usually made to appear. But it will require some time. It should not be difficult, however, for the international conference to devise a *modus vivendi,* based on the principle of the outlawry of war, under which peace may be virtually secure for the period in which the jurists are working on the code. The nations having condemned the war system, and renounced it in principle, should be able to "worry along" without war under an agreed upon interim treaty or *modus vivendi* while the minimum requirements of a code of international law are being formulated!

Chapter V

WHAT IS WAR?

ALL our thinking about plans for the abolition of war is confused if not hopeless until there exists a clear and adequate definition of the thing it is proposed to abolish. It is not mere description of the horror of war that is needed, although too much cannot be said in praise of the terrific candor with which such writers as Sir Philip Gibbs and Mr. Will Irwin have put before the imagination of the world a realistic description of the facts of the past war and the all but unthinkable inferno into which the next war will plunge mankind. Such description serves the purpose of awakening the heart and soul of humanity to save civilization from the abyss into which war is leading it. But with heart and soul once aroused the problem becomes a problem of intelligence, calling for clear thinking as to the object we are dealing with and as to all proposals looking toward its abolition.

It is to this end that we are asking the question, What is war? A plan to avert war or to abolish it must take into account the whole concrete thing, and this we cannot be sure of doing without first stating the thing in terms that are comprehensive and

thorough. Such procedure will save us from shallow and illusory proposals by revealing the full difficulty and depth of the undertaking. It is quite possible, on the other hand, that such a definition of war in concrete and objective terms will greatly simplify the undertaking. With war concretely envisaged, a frontal attack may prove to be more promising of success, and easier to launch, than tentative attacks which, while seeming to take one stronghold of the enemy at a time, leave open to him the ambush of a thousand obscurities and ambiguities from which he can at any time rush again upon us. If we are to have a root and branch abolishment of war we must have a root and branch understanding of what war is.

The importance of this cannot be over-emphasized. Everything hinges on our having a correct and adequate definition. It is no academic interest that prompts us. It is our most pragmatic and vital concern. Failure to define war adequately and accurately results in false or helpless attitudes toward it or in vain, irrelevant and inconsistent methods of attacking it. On the other hand, the battle is half-won when you have accurately located the enemy and measured his resources. The discovery of the true definition of war is the beginning of the end of war. Singularly enough this primary duty has been more honored in the breach than in the observance. Few writers on peace, or statesmen dealing with international affairs, have given it any attention. It seems

hardly to have occurred to them to detach themselves from the din and excitement of the battlefield long enough to ask calmly just what this thing is that we call war. It has been assumed that the thing needed no definition: it fills the landscape and the horizon with its lurid presence: why bother to define it? Go to, men have said, let us hasten to organize something against it! And they have set going many agencies—military alliances, Hague conferences, leagues, arbitration treaties, Locarnos, disarmament programs—but they have never taken pains accurately to locate this enemy against which their good intentions have directed their operations. It is time the whole peace movement called a halt upon itself and calmly set to work to define War. Mayhap a definition will change the entire plan of campaign.

Though they have not been taken consciously as definitions, there are certain current ideas of war which have the practical effect of definitions in that they dominate the thinking of many people. We may briefly consider some of these and go on to other definitions more consciously and critically formulated.

1. War is combat.

To multitudes of people the whole movement for peace is regarded with utter scepticism. The proposal to abolish war is beyond the power of their faith to grasp. War has always existed, they say, and its definite recurrence at more or less regular

intervals is inevitable. For, it is said, war is combat, and man is instinctively a combative animal. To do away with war you must uproot the natural pugnacity with which men are born, and this is to reduce them to mere mollycoddles. Clearly, if that is what the peace movement involves, it is undertaking the impossible. A book has recently appeared in America based upon this definition of war. It boldly proclaims its thesis in its otherwise cryptic title, "Man is War."

But of course the fallacy of such reasoning is obvious. War is not combat. Combat is a phase of war, a feature of war, but any definition of war that takes the category of combat as the essence and substance of war, without taking into account what lies back of the combat, is no definition at all. It shows but a cross-section of the concrete thing we are dealing with. Back of the actual fighting are the preparations, the cause or occasion, the purpose, the habits, the customs, the social and legal sanctions which prompt and approve and support the actual engagement in bloody strife. These must be included in any definition as well as the actual fighting aspect of war. The movement to abolish war does not involve antagonism to the natural combative impulses of human nature, any more than the establishment of an orderly, law-abiding civil society in place of the individualism of frontier or primitive society involves such antagonism.

2. War is the use of force against evil.

This definition underlies much of our popular thinking, and is almost sure to emerge in any discussion of the war question. It is hard to secure any consideration of the problem of war without raising abstract questions about the right to use force against wrong. This is due chiefly to the influence of those interpreters of Christianity, such as Tolstoi, who insist upon a literal and universal application of Jesus' words, "Resist not evil." War is defined in abstract terms as the resistance of evil with force. Those who accept the non-resistance doctrine are, of course, absolutely opposed to war; while those who decline to take the words of Jesus in a literal and universal sense leap easily to the conclusion that, being able to justify the use of force, they are able therefore to justify war, or at least "righteous" war! We are not concerned here with those who advocate the non-resistance doctrine, for, with few exceptions, such pacifists, in addition to their personal attitude of conscientious objection to war, cooperate heartily in all constructive practical efforts by society to abolish war.

Those who do concern us at the moment are the opponents of the non-resistants, who, conceiving war as the use of force against evil, justify it as such. We hear a great deal of eloquence in defense of war based on the fallacy involved in this abstract definition. But the fallacy ought to be too obvious to be

missed by any person of adult intelligence. To fly to the standard of Mars because, forsooth, one is convinced that it is morally right to spank one's child, or to hang a murderer, or to disperse a mob, is simply not to think at all. Assuming that the resisters have the better of the abstract argument against the non-resisters, the obvious question yet remains, Is war a *righteous* use of force, is it a *relevant* use of force as applied to the evil it sets out to correct or to punish, or is war an irrational, misapplied, and barbaric *abuse* of force? Manifestly, we can not justify war by merely defeating the doctrinaire non-resistant.

3. War is, in principle, identical with the police function.

As the police stand to the city, so stands the army to the state—thus the reasoning goes. Policemen and soldiers are assumed to be analogous in function and status. If we abolish war, we ought by the same logic to advocate the abandonment of the police system. This, of course, reduces the peace ideal to absurdity, and inhibits many minds from devoting themselves to it. But war and the police system, instead of being identical or analogous, are diametrically unlike in every point at which the war system clashes with the modern conscience. In its exercise of force the police deal directly with the guilty. War wreaks its devastation on the innocent, while the guilty are rarely touched. The police function is chiefly preventive, protective, humane

and salutary. The war function is destructive, brutal, ruthless, and its effects are degrading to those who participate in it as well as to its victims.

But the most radical difference between war and the police function is the fact that the police act as an instrument of justice under law, and are unable to act save in the execution of law; while war, though recognized by law, acknowledges no law: it is its own arbiter of justice—the judge, jury and executioner of its own case. The police system is the instrument of right. The war system is the instrument of might. Mr. S. J. Duncan-Clark has stated the distinction clearly in the following words:

> The policeman is primarily an arresting officer, acting under the authority of law for the purpose of bringing the lawbreaker within the power of the law. He is supposed to use no more force than is necessary to effect the arrest. In cases where he employs violence, which may wound or kill, the justification is defense of his own life. Punishment is not his prerogative. That belongs to the court. He is not an administrator of justice, he is an agent of justice functioning to bring the suspected or accused within the zone of its administration. Thus far no wars have been fought on this basis, and the parallel between police power and war power breaks down completely at this point. War in history has been a recognized method for attaining national ends. It has been lawful under the international code for any nation which thought it could promote its interests by violence to make war where and when it pleased. The justification for its murderous enterprise has rested wholly with itself. If it succeeded it was

justified. It took what it could take; it held what it could hold. For the defeated there was no recourse; no tribunal of justice; no court before which his case could be heard. He was not dealing with a policeman, but with a highwayman—and a highwayman against whose operations no law existed.

The claim that the army and navy are intended for purposes of keeping the peace, does not affect the fact that, save for grave emergencies, they are rarely used for that purpose. Military pride and profession resent such use. It may be conceded that, even with the war system abandoned, a minimum naval force is essential to patrol the seas against a recrudescence of piracy, but this is a matter wholly different from the demand for naval preparedness commensurate with the navies of other nations. The demand for preparedness is a demand to be ready for the next war, and can not in any other sense be associated with any plan to keep the peace.

4. War is a *method* or *means* of settling international disputes.

We have here a definition which is the result of an earnest attempt to get at the essence of war. The previous categories which we have considered—combat, force, and police—represent for the most part uncritical popular thinking. There is nothing new, of course, in the definition of war as method, or means, and we are not seeking merely a *new* category in which to define war. We shall probably

find that the concept we are seeking is one which appears often in the vocabulary of peace discussion but has not been consciously seized upon as a full and exact definition of the thing we are dealing with. The concept of war as method, or means, has the value that it affords an objective and rational test of war. You can test a method objectively, by its results. This without doubt marks a notable advance in our attempt to deal sanely with war. It lifts war out of the obscure realm of popular emotion, and the abstract realm of doctrinaire pacifism, into the realm of objective fact where it can be discussed in a scientific temper. Praise is due those writers, from Charles Sumner down, who keep calling us away from all purely subjective points of view in our dealing with the problem of war.

By defining war as a *means* of settling international disputes it is thus conceptually disentangled from the high and holy *ends* professed by those who wage war. Having thus isolated the means from the end, the question can be pressed relentlessly: Does war gain the ends for which it is used? The answer which modern intelligence is increasingly agreed upon is that it does not, that the winner loses with the loser, that war is essentially, and in its modern manifestation inevitably, a suicidal procedure.

This being so, the next question is, What shall we do about it? To which the sane and ethical response is, Let us no longer use this method of settling our

international disputes. All of which is logically obvious enough.

But though logical enough the actual, concrete situation does not yield to so simple a conclusion. There seems to be something vastly more to war than is denoted by this definition. For when the crucial moment comes when a nation must choose whether to use this "method" or not, the national will finds itself so completely set toward its use that it is utterly powerless to choose otherwise. Manifestly, war is something more than a means of settling international disputes, else a civilized people with a government of sane and high-minded statesmen would not adopt such a means in the knowledge that it involves awful waste and suffering and devastation—and all with no relevancy to the end in view. If war were simply a method of settling international disputes, and known to be an ineffectual method, a nation could simply reject that method, and be done with it. But, under the present international system, when the crisis comes, a nation *simply cannot* reject that method. A war choice is not a *free* choice. At the moment when war is imminent the national will has been predetermined by forces which are involved in the very tissue of the state and of society. The *event* called war is related to the *full fact* of war as the eruption is related to the vast masses and forces of lava and flame stretching far below and away from the visible volcano.

The definition of war as "method of settling international disputes" leaves out of account great stretches of the concrete fact of war. It does not include its background, its hinterland. Society sustains a relationship to war which is far deeper, infinitely more complex and penetrating, than is indicated by a definition in terms of its responsibility to make a choice, at the moment when such a choice has to be made, for or against this method of settling an international dispute. The tremendous fact about war is that *society is responsible for the situation arising* in which it has to make a choice. It holds relationships with war which extend far back into the remotest obscurities of its organic life. By this involvement of the state with the organized system which begets, nurtures, precipitates and glorifies war, the state really pre-ordains the emergence of continually recurring situations in which it has to choose whether to employ the *method* of war or not. And though choosing it has no choice! This is the terrific ethical tragedy of war, that the state has given such irredeemable hostages to the war system that it approaches the test with a will compromised and enslaved, and as impotent as if it were in the clutch of destiny. Now an adequate definition of war must include this involvement of the war system with the state. Until we have such a definition, all our peace plans are random thrusts in the dark at an object whose full character and exact location we do not

know. Happily, there are signs that certain minds are striving toward such a reorientation of the peace movement by formulating a full and relevant conception of the whole concrete fact of war.

5. War is a "Great Conspiracy" backed by Authority.

In his inspiriting and enlightening book, "Now Is the Time," Mr. Arthur Ponsonby, M. P., late under-secretary of state for foreign affairs in the labor cabinet headed by Mr. Ramsay MacDonald, advances far in the direction we are indicating by exploring what he calls the "Great Conspiracy" which moves with vast and complex and subtle predestination toward the event of war. Mr. Ponsonby speaks as a pacifist, though his book bears no indication that he accepts the term in the sense of non-resistance to force in general, but in the sense of opposition to war and ardent labor for peace. A pacifist, he says, that is, "a lover and pursuer of peace," is working against the "Great Conspiracy." When asked to define what he means by the "Great Conspiracy," he replies: "The fixed and sustained determination of Authority to popularize war." Here are two categories about which the thesis of his valuable book revolves, the category of a Great Conspiracy and that of Authority, both spelled consistently with initial capital letters. There exists in the tissue and context of society a conspiracy of both palpable and elusive forces working vigilantly, both consciously and sub-

consciously, toward the creation of a war situation. And this conspiracy is backed and stimulated by a something called Authority, whose meaning we shall let Mr. Ponsonby describe in his own words:

> It is a mistake to suppose that Authority consists of an individual or any set of individuals who can be easily named. . . . It extends further than and beyond the range of a cabinet or government. It lies at the back of all recognized institutions. It does not reside alone in a king, or a president, or cabinet, or judiciary, or parliament, or party leaders, or established church, or bankers, or commercial magnates, or generals, or admirals, or aristocracy, or professors, or headmasters.
>
> Even if you had a list of these it would be difficult to decide to what extent they exercised authority and how they did it. The positions which "personages" such as these hold create an atmosphere which has been formed round them by the habit, custom and tradition of generations. In a quite undefined and illusive way they impress on public opinion not exactly their own individual views, but the views which are attached to their position and which they have assimilated. . . . An intangible and dominating tradition grows up. So powerful does it become that refusal to conform to it stamps a man as an eccentric, an outlaw, or a criminal. The press accepts it, works under it, supports it, approves of it, and by its own considerable influence helps to extend its scope. Society with a big S is its constant and indispensable propagandist body. The "personages" are drawn into Society if they or their women folk are not there already. The acceptance of the verdicts and edicts of Authority becomes a question of good manners—the strongest of all incentives to conform. Without

any intentional organization a free-masonry of co-operation grows up. They can depend on one another's support; not only the chief on the support of his subordinates, but the chief on the support of other chiefs in other spheres where Authority reigns. So Authority becomes like a big name on a map. You do not see it but it covers the whole ground.

The Great Conspiracy envisaged by Mr. Ponsonby is this far-stretching hinterland of war to which we have referred as belonging to the very essence of war, and which must be included in any definition of it. By "conspiracy" he does not mean a personal, self-conscious and criminal joining of wills for the sinister end of launching the state upon a war. His concept is neither so superficial nor so gross. The thing he is disclosing is a highly refined and subtle joining of impersonal and quasi-personal social attitudes and traditions and consents in a complex but unified trend toward war. "No one can be singled out for blame or attack; too large a section of the nation is involved. No one who participates in it has any definite or evil intentions." And although the whole social order is shot through with the activities of the Conspiracy, catching up in its embrace the allegiance of the masses of the people, the people are not thereby following some elemental or natural craving, or an overmastering human impulse like drink, gambling or sexual passion; they are merely the victims of a widespread, insidious and "cleverly engineered superstition." The combative instinct

exists, and can be easily aroused by the ingenious methods which are adopted. "The natural instinct of twentieth century civilized humanity is for peace . . . but it is deliberately, officially and authoritatively stifled."

We have here a treatment of war that comes excitingly near giving us an exact definition. Certainly the materials are here which if fused and grasped under one category will put the mind in a position fairly and squarely confronting the whole concrete fact of war. What is that category? It is a term which Mr. Ponsonby himself uses with distinct insight; yet apparently he is not aware of its golden value for his purposes. Scattered through his pages in fugitive and unsystematic allusions he speaks of war as an "institution." Authority sanctions and maintains war "as an institution." The concept is plainly important in his thinking, but it has not occurred to him to make it central, essential and normative. In working against the Great Conspiracy the peace-maker, he says, is "attacking war as an institution," and the Great Conspiracy consists of "the powers which maintain war as an institution."

But the concept of Institution includes and fuses both of Mr. Ponsonby's categories—that of the Great Conspiracy and that of Authority. Institution is a more concrete, inclusive and defining category to predicate of war than is Great Conspiracy. Both Conspiracy (in the non-legalistic sense in which Pon-

sonby uses the term) and Authority are swallowed up in Institution.

Mr. Ponsonby is very near the kingdom of outlawry. Only a thin partition separates him from it. He conceives war concretely; he is dealing with the whole fact. Yet there is a film over his eyes. He has not yet found the defining and illuminating term to which the whole tendency of his mind points him. He has stopped in the suburb of the full truth, and is compelled to devise special words, quasi-poetic words, spelled with capitals, to convey his meaning. As a result he sees no other way of resisting war except the personal and physical. When he discovers the solving category he will discover also another method of resisting war. It will be a root and branch method. For the category of Institution, when once you have descried its inherent presence in the object called war, shouts out to you the one direct and effective way to compass its destruction. All other methods of attack fall short. For if war is an institution the only way by which you can get rid of it is to destroy its institutional status, to disestablish it, to delegalize it—to outlaw it.

6. War is an institution.

Whatever else war is, it will not be disputed that it is an established institution, respectable, legal, authoritative. It is an institution in precisely the same sense that marriage is an institution, or the church or the school. To see this clearly, with its implications,

is to awake to a new state of mind on the whole problem of dealing with war. Society is not organized for peace; it is actively organized for war. The war system has a recognized and protected status in the social order, and there exists no peace system or institution which society recognizes and protects. This fact constitutes an awful moral abyss in our civilization for the modern conscience to contemplate. Peace talk when war is impending is hazardous for the talker, and in war time it is criminal. War talk in peace time, which is infinitely more wicked, runs no risk at all. Society makes no provision for putting the war-talker in peace time in jail; but if a citizen suggests peace in war time he is stigmatized by popular sentiment as a "defeatist," if not a traitor, and the law is at hand to put him where his influence will do no harm.

Clearly the war system is in the saddle of society. That is to say, it is established by authority of law as an institution, and no opposite institution exists or is allowed to exist to challenge its age-old rights and prerogatives. The war system is embedded and intrenched not alone in the inert consent and habit of society, but in the definite laws of the state and of civilization, so that a peace impulse or proposal arising inopportunely to the discomfiture or inconvenience of the war system can be "deliberately, officially and authoritatively stifled." This is the supremely relevant fact about war: *It has all the*

law on its side. There is no law on the side of international peace. When once this obvious but overlooked fact is discerned by the opponent of war he will be saved from foolish and futile methods of attacking war, and at the same time there will be defined for him the one supremely effective method for demolishing it. That method will be for society to put law on the side of peace and to put war outside the law. Let Mr. Levinson state it for us:

The principle underlying the outlawry of war is this: The law should always be on the moral side of every question. But the law of nations has always been on the wrong side of the war question. International law has continued to recognize, shelter, protect and reenforce the legal status of war until war has become the most lawful thing in civilization. For, what with laws of conscription, martial laws and espionage acts, everyone who impedes in the slightest degree the operations of war is a criminal. The dire effect of our present situation is plainly seen, for example, on our ministers of religion. They are all morally against war, but because it is legal multitudes of ministers find no way to oppose it. Thus we have the sad spectacle of the conflict between morality and law as shown on the international canvas. The law which should condemn and stigmatize evil, actually embraces and nurtures it, and thereby thwarts the moral will of civilization. *Being unspeakably evil, war's moral status cannot be changed, but its legal status can be and must be changed.* . . . Not until the will of mankind throws the irresistible weight of the majesty of the law on the moral side, by destroying war's institutional status, by condemning and outlawing it,

will this plague of plagues, which has baffled and shamed religion and civilization, ever be exterminated. No halting, feeble, half-way measures will serve; no resolutions or protocols prohibiting the use of certain weapons of war can rise above the folly of self-deception; war cannot be regulated or controlled, for it makes its own ruthless laws which respect neither God nor man; therefore war must not be compromised with, but its entire system, with its warp of force and its woof of death, must be uprooted, overthrown, outlawed—abolished.

Chapter VI

THE INSTITUTIONAL STATUS OF WAR

NOT until the peace movement faces war as an established, organized, legal institution has it faced the whole fact of war. We are not dealing with an abstraction, such as the question of the use of force in resistance to evil, nor with the natural human instinct of combativeness, nor merely with a method of settling international differences; we are dealing with a concrete, colossal and venerable social structure, whose foundations and pillars are the habit and consent of society itself, made explicit in the very laws of civilization. The perception of this institutional status of war provides a point of view from which to consider critically all proposals intended to abolish war.

All of them will betray their own impotence and futility in so far as they fail to touch the institution itself, but leave it in its ancient legal and unchallenged position. All schemes such as military alliances, political leagues or other plans which rely upon war as the ultimate power for enforcing peace will be seen, in the words of Senator Borah's resolution, "to carry within themselves the seeds either of their own destruction or of military dominancy to the

utter subversion of liberty and justice." It will be clear that the peace movement must achieve nothing short of an organic law of nations utterly repudiating and abrogating the institution of war, and providing in its place another sort of institution, an institution of justice, adequate and disinterested, divorced from both politics and force, in which international disputes may find peaceful settlement.

I. A SINGLE, SIMPLE ISSUE

From this point of view, the many ingenious proposals such as pacts of proportional disarmament, treaties of arbitration, complicated systems of military alliances, demilitarized "zones of quiet" on each side of the boundary lines that divide neighbor nations, protocols declaring a certain *kind* of war a crime the commission of which is to be punished by calling into play the undisturbed war system itself, prohibitions on the use of particular weapons, like poison gas or submarines—all such proposals are merely temporizing devices which by their very failure to touch the fundamental issue would either lull the nations into a false sense of security, or leave them still torn and distressed by the demons of suspicion and fear.

The fundamental issue in all this business of peace and war is simply this, Do the nations want war? The issue is not, Do the nations want the league, or the court, or *a* court, or disarmament, or arbitration, or alliances, or neutral zones, but, Do they want *war*?

If the nations do not want war the prime duty of international statesmanship is to provide them a way by which they can say so. If they do want war, or if they are afraid to say that they do not want war, no ingenious partial program, no compromise with the war system, no so-called "steps" toward peace will avail. The direct approach to the nations on the fundamental issue, confronting them with the simple question of the legal institution of war versus its only alternative, a legal institution of peace, is as practicable as it is revolutionary—practicable, indeed, because it is revolutionary.

Civilized society is no novice in dealing with institutions which have become repugnant to its moral sense or a menace to its well-being. Upon the banks of history are strewn the wrecks of institutions that were once deeply embedded in the habit and consent and law of mankind. We have only to name such institutions as the ordeal, trial by battle, piracy, international slave-trade, the duel, domestic slavery, polygamy, to suggest how familiar society is with the technique of root and branch procedure against an enemy institution. Any of these wrecks of one-time legal and respectable institutions will suggest parallels to the process which the nations must take in getting rid of war.

The outlawing of the international institution of piracy is full of suggestion. Here was an an institution, universally accepted and condoned, under

which successful sea-roving pirates were treated as heroes and benefactors on their return home with their spoils. Thus Sir Francis Drake, returning to England from his expeditions, was knighted and sent to parliament for deeds of valor on the high seas. For the same deeds he would today be hanged. What made the difference? The answer is plain. The nations of civilized society made piracy an international crime, punishable by the law of nations anywhere the pirate is caught. The institution was outlawed. The nations simply said, We want no more piracy, we want piracy made a crime; and their jurists formulated the laws to punish any found guilty of it. The international slave trade was outlawed in the same way.

II. THE DUEL

Perhaps the most interesting and suggestive analogy is found in the case of the domestic institution of the duel. Other illustrations have clinging to them certain adventitious associations which may divert attention from the essentials of the analogy, but in the duel you have a match for the war system almost point for point, the two being dissimilar, as institutions, only in the fact that war involves nations while the duel involves two individuals. War is simply dueling on an international scale. The words *duellum* and *bellum* mean etymologically the same thing. The duel had its own special code, the *code duello*,

with highly elaborated regulations and distinctions as to weapons, procedure, seconds, lapse of time, number of paces, and innumerable formalities in relation to the challenge. This institution was thoroughly legal, and had so woven itself into the presuppositions of society's thinking that a man was virtually compelled to uphold his "honor" by resorting to the duel on the slightest occasion of injury or affront. The arbitrament of the sword was accepted as establishing the "honor" of the victor. But when the conscience of society penetrated the absurdity, the irrelevance and the moral repugnance of the institution, it was disestablished by law and disappeared. Vestiges of this system of honor remain in such countries as Germany, France and Italy, but throughout the Anglo-Saxon world dueling has been made a crime, and one who slays another in a duel is treated as a plain criminal.

War, I say, is dueling on an international scale. Like the duel, war has its own code. Three-fourths of our now existing international law deals with the regulation of war and much of the other one-fourth is intimately bound up with the consequences of war. International law is thus practically a code of war. These laws dealing with the treatment of prisoners, with rights of neutrals, with property rights in occupied territory, with regulations of battleships, with prohibitions as to the use of certain kinds of weapons and bullets, and a multitude of other matters calcu-

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lated to keep war within prescribed bounds, do not merely implicate the nations in the specific regulative measures, but make the nations legally responsible for the war system itself. War carried on under the rules of international law is within the law, sanctioned and sustained by the law, just as dueling carried on under the *code duello* was within the law, sanctioned and sustained by the law. In actual practice, however, war breaks away from every regulative leash. It treats its own code as a scrap of paper, dictating its procedure by a prior law, *inherent in war*, that of military necessity, which allows no rule or treaty to stand in the way of victory. And this prior law of military necessity the nations recognize, too, as the supreme law of war.

The pseudo-chivalry of the dueling system has its exact counterpart in the war system. In a dueling society it was assumed that an insult must be treated as a point of honor and resented by force or superior skill with the sword. In all but our most recent peace efforts, when it has been proposed to submit international differences to arbitration, three great exceptions have been made—non-justiciable questions, questions of vital interest and questions of national honor. Happily, our statesmen now see that these exceptions contain virtually all possible issues for which a nation would conceivably go to war! We have made that much progress, at least! But the point to which attention should be directed is that the

category of national honor is the survival and extension to international affairs of the fictitious conception of honor under the dueling system. No more can the honor of Japan, let us say, be vindicated by going to war over the injury done to her national pride by America's folly in immigration legislation than could the personal honor of an individual be vindicated by the duel. Both procedures move on the level of fiction, of irrelevance, of unreality, of falsehood. But so long as the war system is sustained by the law of nations, it keeps the nations posed in readiness to resent affront with the irrelevant weapon of military attack, just as the dueling system kept knights and gentlemen posed in readiness to resent affront with the lance. The outlawry of the institution of war will have precisely the same effect in international relations as the outlawry of the duel had in individual relations. It will relax the mock-heroic pose, and will release a multitude of moral forces of adjustment and prevention which are now inhibited by the presuppositions of appeal to war.

III. SLAVERY

The venerable institution of slavery came to its end, not in America only but throughout civilization, by the same process of outlawry. Accepted as a legacy from the immemorial past the system was outlawed by the British Empire in 1830 and by the United States in 1865. Throughout its long history

innumerable attempts were made by legal enactments to temper its rigors and brutalities. In Rome, the slave was given a legal status, with the right of appeal to the court for certain wrongs done him by his master. In the United States, attempts were made by federal law to confine slavery to a specified area, and the south itself devised many statutes to regulate the operation of the slave system. But as is always the case where an institution resting on the twin motives of brutality and greed is taken by law into the bosom of society, all regulatory or restraining measures availed nothing. The system was becoming more deeply entrenched in the social order with the passing years. At last, following a civil war, slavery was cast down from its status as a legal institution. It was outlawed.

All the world knows that the act by which slavery was outlawed was no highly complicated one involving great subtlety of statecraft. In America, the thing was done by means of writing into the federal constitution these few simple words:

> Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Throughout civilization the institution of slavery is now forever gone. As we look back upon the history of America's procedure against it the most amazing aspect of its abolition was the simple tech-

nique by which it was accomplished. A few words written into the constitutional law of the land, expressive of the profound public determination to have done with the institution forever, were the medium of its utter destruction. The law which had been on the side of the infamy was now turned against the infamy, and slavery disappeared.

Before this simple act outlawing slavery had been performed even Lincoln found himself bound hand and foot in his dealing with the slave traffic. As citizen and as President, he counselled obedience to the law which protected slavery, and he took great pains to make it clear that his signing of the emancipation proclamation was distinctly a war measure. Which illustrates both the power and inviolability of an infamous institution entrenched in the law, and at the same time, the supreme right under the war system to shatter any law of the civil order! Lincoln as citizen and as President was bound by the law. But Lincoln as commander-in-chief of the army possessed the right, under the supreme legality of war, to set at naught any law which stood in the way of victory.

Slavery has gone. But there yet remains the institution of war which in its essential genius is most akin to slavery of all the evils known to mankind. Its foul exploitation of human life, its ruthless disregard of personality, its subjugation of the wills and the bodies of men by sheer brute force, its repression

of individual opinion and aspiration—all this quite apart from the bloody madness of the battlefield, and the immeasurable economic burdens which it imposes upon staggering humanity, makes one marvel that the war system remains yet with us while the slave system has long been cast out.

The legal status of war as an institution is further illuminated by two other aspects of the system which call for consideration. One is the fact that war is a highly honorable *profession,* the other that it is a "*court.*"

IV. THE PROFESSION OF WAR

Aside from the national and international establishment of the war system, the difficulty of getting rid of it is greatly increased by its own highly professionalized internal organization. Resting as it does upon the law of nations, the institution naturally arrogates to itself a pride and dignity which call for a code of internal deportment conceived to be appropriate to its prestige. War, ironically enough, is a profession! No other sphere of human society is so refined and sensitive in matters of precedence and subordination, not even the diplomatic service, as is the war system. It has a chivalry of its own! The internal ethics of the war-making profession is the *ne plus ultra* of meticulousness, of refinement and of discipline. Every little movement has a meaning. Every little part of the uniform is

standardized and symbolic. Rank is omnipotent. The courtesies of meeting and passing, involving the salute, are finely determined. The raw recruit trembles with the weight of the body of military etiquette which is imposed upon him, involving numberless hazards leading direct to the court martial.

This professionalism is no mere discipline of social gentility, but strikes its roots into the ethics of far deeper matters, involving military secrets, freedom of opinion and speech, the right to suppress facts, to distort facts and to manufacture facts in the interest of army prestige or morale, the right of espionage,—the spy, the most detested of men, is a hero in his own military system,—and innumerable other perversions of the ethics of civil life and of civilized mankind. By a process that is infernal in its seductiveness, the military profession allies itself with the most sacred professions of civil life. It captures the allegiance of the scientist in his laboratory and lays his knowledge under tribute with rewards sometimes of rank, sometimes of money. It flatters the preacher of Christ's gospel with the trappings and insignia of rank, and so makes of him a minister of both Mars and Christ, an apostle at one and the same time of goodwill and of hatred and bloody vengeance, of the cross and of the sword.

This professionalism of the war system is of indispensable importance in maintaining the institution. For its professional activities are not confined to

functions within the military organization, but are thrust out into the whole area of civil public opinion where its propaganda, its warnings of alleged imminent danger, and the sheer arrogance of its presence keeps the nation awed and evokes support for the continuous sustenance and enlargement of the war system. How can men who once open their eyes on an institution like this that stands for everything a Christian society detests, and perverts everything a Christian society cherishes—how can men do anything else with it but outlaw it root and branch?

V. WAR IS WORLD'S SUPREME COURT

And, finally, the fact of war as an institution is not fully described until it is disclosed that this institution functions as a court of justice! As long ago as the beginning of the seventeenth century this meaning of war was discerned by Francis Bacon, who argued that "wars are no massacres or confusions, but they are the highest Trials of Right, in which princes and states that acknowledge no superior upon earth put themselves upon the justice of God for the deciding of their controversies by such success as it shall please him to give on either side." This is the theory implicit in the whole war system down to the end of the great war from which the world is just emerging. Lacking any tribunal of rational justice, war is the only compulsory arbiter of disputes between nations. What Bacon in presumptuous reverence looked upon

as the will of God, we moderns know is none other than murderous passion; yet to this foul tribunal vast numbers of the issues between nations have been brought for centuries, and most of the crucial issues upon which humanity's deepest well-being has depended have been tried and decided by it.

How staggering to all mankind's conceit of progress and enlightenment and moral dignity is the unveiling of this capital fact that the world's supreme court of justice is the hell-born institution of war! What pride can we take in the abolition of those petty institutions of trial by battle, or by the rack and stock of the inquisition, or by the duel, when the grand institution of war remains yet with us as the supreme arbiter of the acute controversies of the nations? Little wonder that Count Okuma, at the outbreak of the world war, said to a little group of Japanese Christians and Christian missionaries: "Many thoughtful Japanese are now questioning the value of western civilization. Perhaps our friends in the west will not be so sure now about having something to give us." How can we of the "Christian" west have the face to preach brotherhood and peace and justice to the east when murderous war is still the ultimate Judge in our own civilization?

Has not the hour struck for the peoples of the world to face together the brute fact that war instead of being a caprice, an accident, an impulsive expression of natural passion, an event that pops out of

God only knows where, is deliberately provided for as a cherished institution, established by law, nurtured and greatened by every new law that is made to regulate it? And has not the hour struck for the nations to pluck this infamous institution out of the legal system of civilization, to cast it into outer darkness, and to set up in the place long held by this Supreme Court of War a Supreme Court of Justice and Peace?

Chapter VII

ORGANIZING THE WORLD FOR PEACE

I SHOULD like to devote this entire book, from its first to its last chapter, to a constructive treatment of the outlawry of war, looking neither to the right nor to the left at any contrasting program. But this is impossible. There is too much likelihood of its thesis being accepted without discrimination. For the theme of peace has been so long a mere uncritical sentiment that it seems to have developed in its devotees a sort of conscience for approving every suggestion that comes in the name of peace. And at this moment the peace mind is in such a state of confusion, and, one might say, desperation, that it is almost morbidly susceptible to any plausible proposal that comes along. If one were admitted to the mind of the average peace advocate he would find it elaborately furnished with plans and schemes and contrivances, quite at variance with one another but held together in amiable juxtaposition by the undiscriminating hospitality of their common possessor. The outlawry of war idea has suffered the disadvantage of being too easily accepted by such minds. It has been treated as a kind of truism, to which it was only necessary to nod one's head, or as the alluring dream

of a distant millennial goal which will be attained as the result of the evolutionary operation of many agencies already at work in the cause of peace. And of course it is difficult to oppose or even to criticise the millennium!

The outlawry proposal is not so conceived by its advocates. It is intended to be nothing short of a world revolution on the question of peace and war. There is perhaps no way of breaking up the amiable but noxious habit of careless assent to outlawry except by showing what outlawry is not, as well as by showing what it is. Moreover, as we showed in the opening chapters, the mood of orthodox American peace thinking has been fused with the European system so fully since the war that any plan for peace which either disregards the European system of force or involves a reconstruction of it, has to go against the grain of peace orthodoxy. The challenge cannot be escaped. It seems apparent that any attempt to spread clearly before one's readers what outlawry itself means cannot avoid in some degree a critical comparison with the league system. Necessity forces it upon us, moreover, in the fact that the proposal to outlaw war is *a proposal to organize the world for peace.* And inasmuch as the league of nations is put forward as an effort to organize the world for peace, we are required to state the case for outlawry in terms which will disclose the essential differences between the two forms of world organization.

I. TWO TYPES OF WORLD ORGANIZATION

It is of the highest importance that the outlawry proposal shall be conceived as nothing less than a world organization for peace. It involves the definite banding of the nations together under a common covenant. If any isolationist imagines, as some do, that outlawry affords aid and comfort to his isolationism, he labors under a serious misapprehension. The outlawry proposal is no less an invitation to the nations to participate in a world organization than is the league of nations. The institution of war cannot be outlawed except through some permanent organization which the nations shall together create and in which they shall organically participate.

I stress this point particularly because the misconception is widespread that outlawry is a mere *declaration*, a dramatic gesture, or perhaps an act, but a naked act, performed once for all and forever afterwards efficacious. A distinguished pro-league partisan speaks of the outlawry idea as an attempt to abolish war by "fiat." Another is in favor of it as "a general intent of American foreign policy," whatever that may mean, though obviously it means nothing concrete and structural. Perhaps the widely quoted peroration of an address by Mr. Elihu Root is as prolific a source of this misunderstanding as any other. Mr. Root says:

> War cannot be outlawed by proclamation, or by resolution, or by mere agreement or by mere force. War can be

outlawed only by arraying the moral force of the civilized world in support of definite rules of conduct to exclude war, and by giving to that moral force institutions through which that force may be applied to specific cases of attempted violation. One of those necessary institutions is a court by whose judgment the great multitude who desire the peace of justice may know what is just.

The obvious implication of Mr. Root's language is that advocates of the specific proposal to outlaw war hold the view upon which he animadverts. The fact is that with every word of this eloquent and lucid utterance the advocates of outlawry agree. Indeed, his words could be taken by them as a kind of basic charter of the movement, for outlawry is the only proposal in the field that satisfies the conditions which Mr. Root lays down. Outlawrists have no illusions about abolishing war by "declaration," or by "resolution," or by "fiat," or by some "general intent." They propose specifically to *organize the world against war.* They project an institution, an international structure, in which all the nations shall have organic relationship and under whose protection every nation may have the maximum hope of security. A project which involves this is neither isolationist nor quixotic. It may be radical, it is radical, but it is not utopian, unless the league of nations, by the same token, is also utopian.

What, then, are these two organizations?

The outlawry organization is a court, established

upon a covenant of the nations, consisting of a permanent body of judges who exercise affirmative jurisdiction over all international disputes as defined by a definite code of law whose basic statute makes war a crime.

The league organization is a politico-military alliance, established upon a covenant of the nations which provides that the constituent nations shall submit their disputes to a board or tribunal of arbitration, or to a central committee of diplomats called a "council," and shall refrain from going to war for at least three months after the arbitral award or the committee's report on the case has been made.

Here in essence are the two contrasting proposals for organizing the world for peace. From such generic definitions details are necessarily in both instances omitted. Our purpose is to get at the heart of the two conceptions of world organization that we may compare them without being diverted or confused by technical or minor matters.

The first thing that stands out as distinguishing these organizations from each other is that one is juridical in its character, while the other is political in its character. It is not an invidious distinction. I do not imply that a juridical principle of organization is good and a political principle of organization is bad, or vice versa. Both principles are necessary in the complex relationships of human society. But it raises definitely the question as to which mode of

world organization is *relevant* in the solution of the problem of abolishing war. Which of these two types of organization faces the whole fact of war and promises to abolish it by providing an adequate machinery of peace? To answer this question requires an analysis and comparison of both structures as embodying respectively the juridical and political principles of organization.

The place to begin is, naturally, with the obligations assumed in the respective covenants upon which the two types of organization are founded. The obligations constitute the most sensitive as well as the most essential aspect of any world organization for peace. A nation entering into such a relationship with its neighbor nations naturally looks with grave concern upon the commitments for future action or restraint of action in which the undertaking involves it. Commitments there must be if there is to be reality in the undertaking. Each nation must in the interest of the common good obligate itself to act in a certain way as a member of the world organization. Isolationism is ruled out. Organic sharing by the nations in the common enterprise is indispensable, which means the giving of pledges, the undertaking of commitments, the assumption of obligations.

In the matter of organizing the world for peace, the paramount question, therefore, is: Of what sort must these commitments be? Obviously a sovereign people will desire that its advance commitments shall

be as definite as possible, rather than indeterminate, vague and contingent. Entering into a covenant involving issues vital to its own destiny, a state will desire to foresee as far as possible what course it is pledging itself to take in the event that a crucial situation arises. A state may be induced, on behalf of so great an ideal as world peace, to accept a certain margin of contingency in its commitments, but the element of contingency must be reduced to the minimum. It will insist that all commitments which are irrelevant to the realization of the goal, or plainly inadequate to its realization, or which carry the seeds of further conflict among those engaged in the pursuit of peace, shall be drastically eliminated from the covenant of such a world organization. That is to say, it will so insist if it is a free and more or less detached nation, not living under pressure of desperate circumstances, but in conditions which leave it free to go in or to stay out of the proposed organization according to its own volition.

These abstract considerations assume vital importance in an analysis of the league structure and the outlawry structure.

II. POLITICAL COMMITMENTS VERSUS JURIDICAL COMMITMENTS

Let us look first at the league. Here each nation pledges itself to submit to a body of diplomatic representatives of the nations all serious international

disputes in which it may have a stake. It pledges itself, if called upon by this body, to share in military and economic hostilities against a recalcitrant nation in connection with disputes in which it may have no stake and in which it is not apparently concerned. In all such disputes submitted to this political organization the decisions are reached by a body of diplomatic delegates of the constituent nations. The processes involved are the traditional processes of diplomacy, inevitably reflecting nationalistic self-interest, and involving, with equal inevitability, the intrigue and bargaining which are inseparable from political and diplomatic procedure. Three months after the decision is announced the dissatisfied nation may, if it so elects, without violating any obligation, go to war to force its claims upon other disputants.

Let us look now at the outlawry proposal. Here each nation solemnly renounces the right ever to have recourse to war, and pledges itself to submit its serious international disputes to a court of law. It assumes no sort of obligation whatever, military or otherwise, in connection with disputes in which it is not concerned and in which it has no stake. It has no dealings with the court unless it is involved in the lawsuit. In all disputes submitted to this juridical organization, the decisions will be reached by a body of the world's most eminent jurists, constituting a permanent world court, through processes of judicial procedure unclouded by diplomacy or

nationalistic self-interest, by the application of a code of international law and equity formulated in advance and accepted by all the nations signatory to the court. The deliberations of such a court are thus dominated by impartial standards of justice which allow no place for intrigue and bargaining. The disputant nations pledge themselves that when the judgment of the court is announced they will faithfully abide by it, and in no event go to war.

Here, epitomized, are the obligations involved in the two contrasting forms of a peace organization of the world. They should be examined in some detail and concretely. Happily, in the case of the league we have at hand the interpretation of its most distinguished American advocate, Justice John H. Clarke, formerly of the United States supreme court, who is president of the League of Nations Non-partisan Association. Mr. Justice Clarke's view, as expressed in an address before his association, will be generally acceptable as an authoritative deliverance on behalf of those who look to the league as a solution of the problem of world peace. The heart of this address is a careful setting forth of the obligations which the United States would assume as a member of the league, together with an argument designed to show that the United States is not only safe in assuming these obligations but in duty bound to do so. Mr. Justice Clarke declares that there are four obligations imposed by the covenant of the

league upon all its members, which he states as follows:

1. The fundamental and most important obligation we would assume by joining the league would be in substance an agreement that we will not go to war against any other member nation until after we have submitted our differences to the council or assembly for decision and a published report; but with the right, abundantly reserved, to thereafter go to war—appeal to the gun and torch—if we should wish to resort to it.

2. The league is not given power to limit the army or navy of any nation, but the council is directed to formulate plans for the reduction of the armaments of all nations to the lowest point consistent with national and international safety, and to submit such plans for the consideration of the various governments. . . . Thus the obligation we should here assume by joining the league would be, only, to consider the plans which may be proposed, with unrestricted right to accept or reject them, but to be bound by them for ten years if once accepted.

3. The third obligation is under article XVI, and consists in an agreement to join the other nations in imposing a world-wide economic and social boycott upon any covenant-breaking member of the league.

4. Article X—I think it very clear that this article when read with articles XVI and XVII, renders it necessary for any government entering the league to assume the possibility, remote though it be, of being at some time obliged to join the other free and honest nations of the world in defending liberty and independence from the assault of the predatory and the false—just as we were obliged to do in 1917 without the league.

"These," adds Mr. Justice Clarke, in summary, "are the only obligations important enough for us to discuss in considering whether or not our government should enter the league of nations. The object of them all is to promote permanent peace; they represent the best thinking of the strongest men of many nations directed to that end; and, therefore, because there is no danger, but, on the contrary, much of hope and healing for us and all the nations in every one of them, our government should enter the existing league with such reservations as to it may seem wise."

Mr. Justice Clarke is worthy of special praise for having dwelt with such candor and in such detail upon the *obligations* assumed by joining the league. In discussing these obligations, he is dealing with the very genius of the organization, or in Mr. Wilson's words, with "the heart of the covenant." Most American advocates of the league avoid these structural considerations and dwell upon the marginal philanthropic and educational processes by which the league may be utilized to advance, on an international scale, many causes, such as labor, regulation of the opium traffic, regulation of the traffic in women, development of backward peoples, regulation of the traffic in arms, freedom of communication, the prevention and control of disease, and so forth. That the league is competent to do much in these fields cannot be questioned, and that it has already numer-

ous and significant achievements to its credit is occasion for general gratification. But these are by-products of the league. The essential and direct product for which it professes to exist is peace, the pacific settlement of international disputes which threaten war. And the essence of its method for producing peace is found in its obligations, its mutual commitments, not in its marginal and incidental philanthropies. In the words of the covenant's own preamble: "The high contracting parties, in order to promote international cooperation and achieve international peace and security *by the acceptance of obligations* . . . agree to this covenant of the league of nations." The obligations *are* the league. There is no debate on the philanthropies. But the philanthropies must not obscure the league itself, in any consideration either of America's duty or of the larger question whether there is real promise of world peace by the league's method.

Are these the sort of obligations which, if assumed by the nations, will produce peace?—this is the question. Or are they even relevant to an organization which contemplates the shifting of the world from a war basis to a peace basis? We are not interested to pry into the loopholes which exist in this covenant for evading these obligations, or the degree of actual good faith with which its signatories entered into their covenant relationship, or the sincerity with which they have actually carried out their obliga-

tions, or any other question of practice, such as the use that has been made of extra-league devices—for example, the supreme council and the conference of ambassadors—for keeping vital issues from coming within the jurisdiction of the league. We are not discussing the league's practice, but its theory. We are taking the league at its face value, in its most idealistic and pretentious aspects. We only ask, Is the theory right? Does it look in the direction where lies peace, enduring peace? Is this covenant the *kind* of covenant which the nations must enter into in order to rid the world of war?—that is the point, and the only point, of our present inquiry.

So long as the league type of world organization stands alone, so long as the principle of a political alliance of governments is the only concept on our horizon, the real character of the league will only with difficulty disclose itself. And even though certain weaknesses and dangers inherent in such an organization may be seen and acknowledged, the strong sentiment for peace is likely to ignore or override them and, on the ground that we must do *something*, we may be persuaded to accept the league because it seems the only thing at hand. To oppose it, under such circumstances, is to write oneself down in popular prejudice as an obstructionist, a selfish nationalist, an isolationist. But if alongside the league proposal there is erected another sort of proposal, standing on quite a different level, embodying

an entirely different principle and method, our minds are likely to deal more analytically with both the league and its alternative, and to discern weaknesses, or irrelevancies, or dangers, as well as virtues, which without such comparison would have escaped us.

III. A JURIDICAL ORGANIZATION OF THE WORLD

Let us consider, then, the nature of the covenants involved in the proposal to outlaw war. These covenants are definite, calculable, and specifically relevant to the purpose of such an organization, namely, the pacific as against the violent settlement of international disputes. They consist of pledges to abjure recourse to war, and to submit to the international court of law—in whose creation and maintenance each nation has a part—all international disputes which cannot be solved by direct negotiation, conciliation or voluntary arbitration. Here is a commitment which each nation can analyze in advance of the emergence of any issue whatever, and know what its position and course is to be. Each nation knows in advance that when a crucial issue arises between itself and another nation there will be three pivotal points by which its course will be determined.

1. That war is canceled from the case, first by its own pledge not to resort to it, and secondly, by the identical and equally solemn pledge of its disputant neighbor.

2. That the merits of the dispute, if it is carried

to the court, will be decided by the application of a code of international law in whose creation the disputant nations have participated and which they have accepted as embodying the principles of justice and right.

3. That the law will be applied impartially and a judgment rendered by a body of the world's most eminent and competent judges, as far removed from the influences of political bias or national self-interest as a human tribunal can be.

In short we have here a covenant all the terms of which can be calculated in advance, save only what the decision of the court will be in the specific case. What civilized nation can refuse to share with its neighbor nations in a universal equation of peace whose only unknown quantity, the decision as to the merits of the particular dispute, is committed for determination to the most competent, most disinterested and most just agency which human intelligence can contrive?

This juridical covenant of the outlawry proposal and the political covenant of the league of nations plainly belong to two different spheres. They involve commitments strikingly dissimilar. The organizations founded on them function on different levels. In the essential matter of abolishing war their respective presuppositions are incommensurable —one proposal offering the maximum of security and impartial justice, the other offering the uncer-

tainty that goes with political diplomacy, and carrying into the future the seeds of armed conflict. One confronts war directly and outlaws it; the other cherishes it in its bosom and tries to make terms with it.

In the address of Mr. Elihu Root as president of the American Society of International Law, on April 26, 1923, in which he advocated America's adherence to the league court, Mr. Root gave considerable attention to this distinction between the juridical and political types of world organization. In another chapter we shall show that the league court falls far short of answering to the juridical institution which his words portrayed, but that point can be waived here for the sake of including Mr. Root's vivid and discriminating contrast of the two types of organization. In his endeavor to convince American opinion that our adherence to the court involved not at all the question of our relation to the league—a contention from which the American people now quite decisively dissent—Mr. Root declared that the two projects, court and league, "approach the great problem of preserving peace from different angles and by different methods. They differ radically in their nature and their effects." He then considers the league in these graphic words:

> The organization of national representatives in an assembly and council provided for by the league of nations' covenant was in substance a provision for a special form of diplomatic procedure, adapted like all diplomatic procedure

to deal with questions of national policy. The assembly and council are not composed of natural persons. They are composed of states represented by natural persons. It is not M. Bourgeois or Lord Balfour who speaks and votes in the council. It is the republic of France and the British empire speaking and voting through M. Bourgeois and Lord Balfour. It is not Señor Agustin Edwards or Lord Robert Cecil who speaks and votes in the assembly of the league. It is Chile and South Africa speaking and voting through them. The honorable obligation of each individual taking part in the proceedings of the council and assembly is the obligation of a diplomatic agent toward his own country. There is none of that special personal obligation which constrains the conscience of a judge upon his oath and his self-respect to decide any controversy in accordance with law and the facts, without subordination to political power.

Over against the league type of organization Mr. Root sets the court type which "completely excludes the essential characteristics of the league organization and procedure." He continues:

No diplomatic agreement is sought or attained. No member of the court represents or is at liberty to represent any state whatever. Their duty is not to deal with policies or agreements, but to decide questions of fact and law in cases brought before them. Each judge's obligation is not to represent his country, or any country, not to execute the orders of any foreign office, not to reflect the policy of any government, but upon his own conscience to hear and decide upon the evidence and the law in accordance with his own personal judgment.

And again:

> On the other hand, consider the entirely different office of an international court. The least of the benefits which such an institution can furnish is in its decision of particular cases. That is frequently of high importance because, however unimportant in itself the question decided may appear to be, such questions are frequently the origins of general ill-feeling. They frequently halt the whole progress of diplomatic effort toward a good understanding. One of the curious human features of international affairs is that two peoples will accept without irritation an impartial decision upon a question between their two countries which, if the foreign minister of either country had agreed to the same thing voluntarily, he would have been hung in effigy.

I am not quoting Mr. Root's contrasting pictures of these two types of organization for the purpose of choosing between them, as though the juridical were superior to the political, or as though the two were mutually exclusive. That would be absurd. Diplomacy and conference there must always be. With the peace of the world organized on a sound juridical basis, with a court exercising affirmative jurisdiction under a code which makes war illegal and criminal, with such an organization undergirded by a general treaty in which the nations have renounced war and given pledges not to resort to it in the event of any dispute, there would be increasing use of diplomacy and conference and voluntary arbitration for the adjustment of controversies out of court.

IV. WHICH ORGANIZATION FUNCTIONS FOR PEACE?

The issue between court and league is this: To which form of organization, juridical court or politico-military alliance, may the nations hopefully and safely make advance commitments, commitments so vital and solemn that they not only express the unselfish desire for the general peace of the world, but involve potential issues affecting the destiny of each participating nation? Commitments there must be, I repeat. Common obligations must be undertaken by all nations. Some organization must be set up, clothed with power, and the United States must be a part of it. The vital question for the United States, whose participation in the tangled war traditions and exacerbations of Europe is in a peculiar sense not necessitated but voluntary, is, therefore: Where shall we lodge our commitments, with a political alliance making us willy-nilly party to all the disputes of Europe's system within which we can exercise no high order of understanding, and drawing us by our own solemn pledges into her future conflicts, or with a juridical institution which transcends the manipulations of political diplomacy and with which we have active dealings only when we are party to a dispute? To which sort of world organization, in the name of peace, shall America give hostages involving her national character and destiny?

The question brings us to the very heart of the

issue as between the league of nations and a court based upon the outlawry of war.

It is not a question of participation versus isolation —isolation when world peace is at stake is as impossible as it is ignoble.

It is not a question of willingness to sit at an international council table with our neighbor nations to confer with them on international problems, and so far as possible to solve them there—no lover of America could take pride in his country should she decline so elemental a duty.

It is not a question as to whether the league is perfect or imperfect—any institution which can be set up, juridical or political, will be imperfect.

It is not a question of the "next step"—"steps" are blind and irrelevant unless we know where we wish to go.

The question is, Does the league move along the right lines? Is it headed toward peace or toward more war? Does its essential genius—that of a politico-military alliance—provide a relevant principle upon which to project a world organization capable of doing what it sets out to do?

The outlawrist assumes that the peace movement is a movement *to organize the world against war.* He takes this conception seriously, radically, regulatively. He cannot take seriously, as a *peace* proposal, any measure or scheme that makes friends with war on any basis. He cannot see that a world organiza-

tion which refuses to disestablish the war system, but rather rests upon war, is a world organization against war. The outlawrist is not against the league: he is against *war*—against the war system which is no less in the league than in any other military alliance which history shows us. He is in favor of conference—but he is opposed to any plan which clothes any sort of conference with military power to execute its decisions. Only a court would he clothe with power—and that power he would allow to be exercised only *under law* as defined in its own code, and then not by military force but by public opinion operating in virtue of the covenant in which the nations had solemnly agreed to abide by the court's decisions and had forsworn recourse to war.

The illusion that a council of international diplomats invested with armed power to execute their decisions in vital disputes between nations is an organization of world peace, is dispelled when the processes of diplomacy through which such a body works are analyzed. Such an organization inevitably becomes the object of political manipulation by states, or groups of states, to utilize its power for their own special ends. The organization is bound to be inoperative in the most important and crucial matters, because its own power may be so easily divided at the source. In any political league of states there is bound to be perpetual intrigue to secure the aid of the common machinery on behalf of the

larger states and of the principal groups of states, and to devise ways by which certain vital issues can be made to wear false masks so that they need not be brought under the jurisdiction of the league. Each great nation, and each group of nations with identical interests, regards the league with favor in so far as it promises to advance the interests of that nation or group, and as something to be obstructed in so far as it fails to do so.

This is precisely the attitude of France to the league. Its machinery she is willing to use when it is to the advantage of her foreign policy to do so. This accounts for the alacrity with which France ratified the Geneva protocol. In that instrument, under the league, she would have found the sort of alliance with Britain for which she had pleaded ever since the armistice, and which she knew full well would be in a military sense worth infinitely more to her security than a dozen leagues could be. Britain's support of the league, as Mr. Hilaire Belloc points out, is on precisely the same lines. British pro-league opinion strongly urged that the Corfu case, for example, should be handled by the league, the reason being, plainly, that Italy was coercing Greece, a virtual ally of England. But in the case of Egypt the same persons declared it was none of the league's affair, notwithstanding the considerable sentiment in France and other member nations for bringing it to the league's attention. In Italy there is little league

sentiment, chiefly because Italy feels that the issues in which she will have a stake are not likely to be handled to her advantage; while all the little nations, many of them owing their very existence to the league, and all of them regarding the league as a useful preserver of their independence, naturally make consistent gestures of support in its direction.

And now with the admission of Germany, the possibilities of machination are multiplied. Perhaps by an entente with England Germany may hope to use the league's machinery to revise the treaty of Versailles at the expense of France. At any rate, the two dominant policies playing against each other for influence in Europe are those of Britain and France, and each is engaged in jockeying events and interests and manipulating friendships and hostilities so as to put the machinery of the league behind its own purposes.

It is through the devious processes of a diplomacy imbedded in these multifarious and complex political motives that the makers of the league imagined it might keep the peace of the world! It is a sheer illusion. The thing cannot be done in that way. The log-rolling of international politics, as interests and rivalries emerge with more and more insistent claims, cannot but develop, through fear and cupidity and ambition, first blocs of states, then merging of blocs in larger groups, and finally a balance of power not a whit different essentially from that balance of

power which obtained before the great war. There could be no greater delusion than to imagine that because these nations are banded together in a league, they therefore are in no likelihood of reproducing the old-time balance of power system. The very gravitation of political self-interest *under pressure of the war system* will attend to that.

This shuffling and shifting of political interests within the league, leading to new combinations of states and to mergers of lesser into larger combinations, spells the ultimate utter failure of the theoretical security and protection which it is assumed the combination as a whole will bring to bear in case of an emergency. War will play havoc with any covenant of which it is a recognized part.

When, now, we turn to the type of world organization contemplated by the proposal to outlaw war we are in a different atmosphere. It is an atmosphere of radical realism. War, and all armed sanctions, have been forsworn by all parties to the dispute. The judges and the litigants know that the court's decision is to be the end of the dispute. The court has been universally accepted as the *supreme* court of the world, displacing absolutely, by solemn international agreement, the supreme court of war. The court possesses acknowledged jurisdiction. The facts will be presented. The law in the case, which will be interpreted by the court and applied to the facts, will have been already formulated, and will

be found in the code approved by the nations. The atmosphere is one of reason and justice. There is no place for political shuffling and manœuvering. Each nation is the equal, in this court, of every other nation.

If the dispute is between a great and a little nation, the little nation may be as sure of justice as if it were politically equal to its great-power disputant. For in the outlawry organization of world peace all states stand on the same level, just as do the varying states of our American union before the supreme court of the United States. There is no need for the awkward and unjust discrimination between greater and smaller powers, such as finds embodiment in the council of the league of nations, dominated by five great powers, as over against the relatively impotent assembly where all powers are represented. Outlawry furnishes an organization that functions plainly for peace, and for the peace of justice. It makes no place for military sanctions. It presupposes the good faith of the nations that have signed its covenant. It acts upon that presupposition just as the supreme court of the United States presupposes that a judgment in a dispute between states will be accepted by the disputants as final.

From all this it should be clear to every mind that the difference between the outlawry proposal and the league of nations is the very simple but tremendous difference that the former undertakes to

abolish *war*, the latter does not. The outlawrist is against *war*—that is the sole object of his attack. He insists that the whole war institution rests upon meretricious and flimsy foundations; that if civilization desires, as he believes it does, to have done with it, and will agree to renounce its further use, setting up a supreme court of law in its stead, war can be utterly abolished, as slavery and piracy and dueling have been abolished.

The outlawry movement asks that such a program and purpose be the basis of the foreign policy of the United States. It asks that the United States enter into no league or alliance of governments whose covenants commit nations to the use of war in any form. It refuses to recognize the institution of war in any language, in any document.

Chapter VIII

A REAL WORLD COURT

IT would be needless further to consider the proposal of a real world court but for the fact that there already exist two international tribunals. In one of these the United States is a participant. The other, founded by the league of nations, has definitely failed to persuade the American people that the cause of world peace would be advanced by the adherence of this nation to it. Naturally, many readers of this book will be asking, Why expound so earnestly the virtues of a world court when the United States refuses to go into the Permanent Court of International Justice save on terms which are unacceptable to its other supporters? Why not rather direct your effort toward persuading the United States to adhere to that court? The answer to such a question should be easily inferred from previous chapters, except that the reader may not have possessed himself of the facts as to these two international tribunals. It seems important, therefore, to make clear what the outlawry of war proposal means by a *real* international court as contrasted with either court now in existence. The contrast itself will illuminate the essential genius of the outlawry proposal.

The program for the establishment of a real international court to administer a code of real international law is put forward by no group of peace advocates now in the field save only those who advocate the outlawry of war. Indeed, the nub of whatever criticism this idea has aroused is that it promises something that it cannot deliver, that its kind of court is an impossibility at any reasonably near future date. We are therefore certainly not dealing in an argument of straw when we set out to consider with some detail the question of a real world court and to make clear the differences between the outlawry court and the two now existing tribunals.

I. OUR TWO ARBITRATION TRIBUNALS

When an informed advocate of the outlawry of war uses the word "law" he means law—not expediency, or compromise, or any subtle form of coercion, but law, in the only sense in which the word may be rightly used. When he uses the word "court," he means a real court—not a tribunal of conciliation, or of diplomacy, or of arbitration. It is of the greatest importance that the concept of a *court of law* be distinguished from the concepts sometimes interchanged with it, and particularly from the concept of an arbitration tribunal.

To speak about "the substitution of law for war" when referring to the Hague court, the league court or the league of nations, betrays loose thinking, and

is the cause of much confusion in public understanding. None of these institutions applies or proposes to apply law as a substitute for war, in any such sense as civil courts apply law. Their principle is essentially arbitration—quite another thing. Their two so-called courts are really arbitration tribunals; one honestly calls itself a court of arbitration, the other calls itself a court of justice, but the name over the door does not affect the mode of functioning within. Both function arbitrally, and under present conditions there is nothing else for them to do.

These statements are rather more categorical than I could wish them to be, for there are qualifications that must be made in the interest of absolute accuracy, but the truth of them is so preponderant, and the difficulty of getting the public to face the facts at all, in view of its present confused state of mind in international matters, is so great that I choose to state the case thus categorically. If the reader will let these statements stand for the moment we shall come back to them presently. But I repeat: the highest level attained by the orthodox peace movement is that of arbitration. Over against its various schemes and institutions stands the proposal of outlawry which offers a real court, with real law, as the sure basis of security, the adequate ground for disarmament and the pledge of permanent peace.

The principle of arbitration as applied to international disputes has undergone an interesting evolu-

tion. Its earliest use was in disputes of a minor character which, having failed of settlement through negotiation, were committed by mutual consent of the disputants to the decision of disinterested third parties. This purely *ad hoc* use of arbitration attained considerable vogue in the nineteenth century, when 471 cases were so settled, while only six cases had been settled by arbitration in the entire eighteenth century. The reference of disputes to arbitral commissions by mutual consent was increasing steadily in the opening years of the twentieth century up to the outbreak of the great war.

Meantime, with the multiplication of international treaties arising from the increasingly intimate and complex contacts in modern civilization, the practice grew up of incorporating in many bilateral treaties an arbitration clause, providing that in case of a dispute over the interpretation of a given treaty the same should be submitted to arbitration. This was a distinct advance over the older occasional resort to arbitration in that it laid the foundation for the settlement of a possible dispute before the dispute arose. Many such arbitration clauses were inserted in treaties negotiated during the nineteenth century.

With the two Hague peace conferences, in 1899 and 1907, came the recognition of the principle of arbitration as a device capable of general application. These conferences set up at The Hague the permanent court of arbitration to which it was hoped the

nations would carry their disputes. It was for the housing of this court of arbitration that Andrew Carnegie built the famous peace palace at The Hague. This "court" consists of a panel of names of distinguished jurists, each nation furnishing four, from which disputant nations may choose a tribunal to hear their case. The submission of cases by the signatories is purely optional. The court has no power to compel the appearance of a nation on the complaint of another nation; it has no established code of law to administer, and it lacks continuity.

The Versailles conference, however, was not content with the existing tribunal at The Hague, but chose to provide for a special court under the league, fundamentally not unlike the Hague tribunal, but involved with the league and articulated with its other functions as part of the league system.

The reasons for rejecting the Hague court and creating another were roughly three: The enemy and outcast nations, particularly Germany and Russia, were signatories to the Hague court; there was a felt need for a tribunal that should articulate with the league; and it was desirable for many reasons that there should be a court composed of a continuing body, not the least cogent of which was the certainty that there would be an unusual number of cases arising immediately over the liquidation of the war under the terms of the Versailles treaty. Hence it was provided in article XIV of the covenant that a new

tribunal should be created. This was done in 1920, with the founding at The Hague of the Permanent Court of International Justice side by side with the Permanent Court of Arbitration. It is this court which has been the subject of debate in the United States since 1923, when President Harding proposed that we adhere to the protocol creating it.

Both these courts are arbitration tribunals. The older confessedly is such. No one will contend otherwise. It was intended so to be by its creators, the Hague conferences. The functions and character of a real court it does not possess. A special tribunal of five jurists selected from the Hague panel to hear a specific case tries the case and reaches its award in essentially the same manner as would any ordinary arbitration committee. Such an arbitration committee could, and in all probability would, take advantage of the rules of procedure worked out for the guidance of the Hague tribunal. But there is no more law, or better law, available for the use and guidance of the Hague tribunal than for an informal arbitration committee. And there is not an ounce more of authority lodged in the Hague tribunal than in such an arbitration committee. The older Hague court is by universal acknowledgment an arbitration tribunal.

When, now, the league court is compared with the older Hague court, there is no new feature which decisively distinguishes the two—by this I mean

juridically decisive. The new court consists of a definite number of judges, elected by the league, for definite terms, paid regular salaries, and meeting periodically to hear whatever cases may be submitted to it. It differs in these particulars from the older tribunal, but only one of these particulars is juridical in character, the others are all obvious expedients. The one juridical feature is that of permanence or continuity, as contrasted with the *ad hoc* selection of the judges for each suit which comes to the Hague tribunal. This, without doubt, is a real juridical improvement, but it does not substantially invest the functioning of the court with any principle above that of arbitration.

It will be replied that this court, being a continuing body, is enabled to use its past decisions as precedents, and thereby contribute to the development of international law; it is thus in the way of evolving into a real court. But if international law has to wait for its development on the precedents set by an international court, we shall have to put up with our present chaos in that field for a long, long time. The number of disputes that actually come or are likely to come to an international court of any character is very small. Since the beginning of the Hague court only seventeen cases have been submitted to it. The league court has delivered some fourteen advisory opinions and five judgments since it was established, but practically all belonged to

the abnormal crop of disputes growing out of the war. But even so, the statute of this league court expressly forbids the use of a previous decision as a precedent in any subsequent case. Article 59 definitely prescribes that "the decision of the court has no binding force except between the parties and in respect of that particular case." The principle by which law could evolve, albeit ever so slowly, under the functioning of the court is thus ruled out by its own statute.

We return to the statement that there is no respect in which the league court differs juridically from the Hague court, save in that of continuity which, as we have seen, is not a juridically decisive difference. There is not a shred of law available to the league court which is not available to the Hague court, nor is there a legal procedure open to the one which is not open to the other, nor does the league court possess an additional featherweight of authority. The league court was established definitely, under articles XIII and XIV of the covenant, for the express purpose of providing an apparatus of *arbitration.* At no point in the covenant does the league contemplate the founding of a court with affirmative jurisdiction for the adjudication of disputes in accordance with a recognized body of international law. Arbitration, not law, is as high as the league professes to aim. The covenant itself is explicitly a covenant to submit international disputes to *arbitration,* and

the court created under the covenant is the realization of that idea.

It will perhaps seem strange to British or other European eyes, if any such should do this book the honor of reading in it thus far, to see this point stressed with such emphasis. The subject is hardly discussed in Europe. It is taken for granted. The peace ideology of Geneva consists of the three words —security, disarmament and *arbitration.* The same word and the same idea are applied to the league court which the same nations applied to the Hague court. But in America, in order to touch the conscience of the country on the subject of entering the new court, the pro-league agitators for this court created a sort of mythology of grandeur and awe about it. It was represented as an enormous advance upon anything that had ever been undertaken before. Secondary and inconsequential details were exaggerated into features of prime importance, while all the time the Hague court in which America has membership is capable of doing everything the league court is doing, save only to render the special service to the league in the way of advisory opinions.

By entering this court the United States would only duplicate the thin international obligations we have already assumed through our membership in the Hague court. I am not by this argument giving a vote of confidence to the Hague tribunal. I have no confidence in it at all, when the weight of peace

or war rests upon it. The analogy between it and the new court is drawn simply for the purpose of showing why the new court also has no claim upon our confidence. It is not a court of law, not a real court, but an arbitration tribunal.

II. ESSENTIALS OF A COURT

What are the essential features in the structure of a court of law? They are three: A body of judges, a definite code of law, and affirmative jurisdiction. Lacking any one of these, a court is not a court of law, a judicial tribunal. The league court possesses the first but lacks the second and third. Everyone knows the crude and unstable condition of so-called international law. Every jurist and statesman concedes the paramount importance of codifying it, in order that a recognized body of accepted jurisprudence may be available for the adjudication of international disputes; and not merely codifying already existing laws, but formulating new laws of peace. The league court has no body of law by which it is bound as real courts are bound. Such international laws as exist in scholarly but unofficial treatises, are almost wholly "rules of war," for war has dominated international "lawsuits" and international relations ever since sovereignty was invented. It is not strange that the United States hesitates to commit her destiny to a tribunal bound not by law but by rule of thumb. And certainly, in the light of

this state of things, it ought to be clear why the United States refuses to join any league or alliance which pledges her to assent to the use of force by the league in enforcing the decisions of such an arbitral tribunal.

Moreover, a judicial body has jurisdiction, that is, the power to summon a defendant to come to court. This principle of affirmative jurisdiction is of the essence of a court of law. For a nation to be free to say, as Austria did when Serbia offered to submit her case to the Hague court, that she would not do so but would take the law into her own hands, is to make a futile mockery of the court. The league court has no more power than the older Hague court to bring to trial any nation that refuses to come. Indeed, the Hague tribunal was no more impotent at Sarajevo than the league court was at Corfu.

No doubt the optional clause attached to the protocol of the league court, by signing which a nation confers upon the court "compulsory" jurisdiction in any dispute to which that nation is a party, will arise in the reader's mind to qualify our contention. Twenty-three nations, it is said, have signed this optional clause. I have deliberately omitted to make mention of the fact for the reason that the significance of the fact is utterly nil in respect to the peace of the world. Not a single great power has signed the compulsory jurisdiction clause, and not a single one will do so, as the court now stands. Of the

smaller nations which signed it, most acceptances were for limited periods of five or ten years.

I say the larger nations will not sign it, and I add, they ought not to sign it. The little nations have everything to gain and nothing to lose by compulsory arbitration, no matter what defects inhere in the constitution of the arbitral tribunal. Lacking in military power to defend their rights in disputes with the strong nations, the lesser nations naturally look with favor upon compulsory arbitration. The greater nations know that compulsory arbitration is for them fraught with grave dangers. They cannot afford to bind themselves to an obligatory settlement of *all* disputes by a court which itself is not bound. To thus confer a roving, irresponsible, blanket jurisdiction on any court of arbitration is to lay one's nation subject to the most unconscionable demands of other nations.*

Arbitration is far to be preferred to war, and it ought always to be offered before resorting to war. But compulsory arbitration might easily be provocative of war. Under its blanket provision a nation could safely pick a quarrel with its neighbor on matters which are so clearly within the sovereign rights of its neighbor as to arouse that nation to fight rather than to arbitrate such an outrage. Were the compulsory arbitration arrangement not in effect the

* For more extended comment on compulsory arbitration, see chapter IV, page 68 ff.

provoking nation would not think of raising such an issue.*

What is the alternative? Is there any other way except an *ad hoc* arbitration voluntarily agreed to after the passions have been aroused by the dispute? There is another way. It is the way offered by the establishment of a *real* court of peace, clothed with real jurisdiction—a jurisdiction defined and limited by its own code of international law and undergirded by an international treaty in which the nations have

* One need not be technically versed in jurisprudence to know that affirmative jurisdiction carries legal implications of vital importance which could not inhere in any arrangement for so-called compulsory arbitration. Waiving now the fundamental objection to compulsory arbitration referred to in the foregoing paragraph, it should be obvious that compulsory arbitration is not *compulsory,* and could not be made so by conferring it upon any arbitration tribunal. It should in accuracy be called *obligatory* arbitration. In a dispute involving this self-imposed obligatory arbitration, if one disputant nation refuses to arbitrate, or juggles or shuffles along without explicitly refusing, or blandly but insincerely declares it intends to arbitrate yet does not take the steps to do so, there is absolutely nothing that can be done about it. In effect the nation is breaking its obligation, but there is no way by which it can be brought to the arbitration court, which is powerless, or by which it can be driven from behind its specious defaulting so that the public opinion of the world can register its judgment against such a defaulter. In a real court, clothed with *affirmative* jurisdiction, the court entertains the case at the suit of the plaintiff, issues a summons to the defendant, hears and decides the case and publishes its decision to the world—*whether the defendant comes to court or not.* Thus the moral power of world public opinion has a chance to concentrate upon the offender who is thus left without defense or excuse.

forever renounced war as an instrument for the settlement of their disputes. To this court any nation may go with any kind of complaint. The court will hear the complaint, and if it decides that it has jurisdiction, will summon in the offending nation and try the case. It will act as any other real court of law in the world acts. If it has no jurisdiction—that is, if the case is not covered by the code or involved in any treaty—the court will refuse to hear the case, just as any real court in the world would do. In such an event what then becomes of the dispute? There are two things that may happen to it, and one that will not happen.

First, the one that will not happen: the disputant nations have agreed not to go to war over it. War is thus cancelled from the case by the registered will and the plighted honor of both nations. This pledge outlawing war will have been taken also by all the neighbor nations, and thus the united moral will of the world will have a stake in seeing that war is not brought back into the civilized community of nations again.

Secondly, the dispute may be settled by the informal help of neighbor nations, or by the good offices of the league of nations, or by voluntary arbitration, or by diplomatic compromise—this is the field in which those functions called conciliation, negotiation, arbitration rightly apply.

Thirdly, the dispute may never be settled, save

only as time and the vicissitude of events may cause it to disappear.

It must be borne in mind that these statements apply to a dispute over which the court has declared that it has no jurisdiction. Every nation, great or small, is safe in clothing with affirmative jurisdiction a real court of peace founded on the outlawry of war, for the obvious reason that the scope of the jurisdiction of such a court is known in advance and agreed to by each signatory. The code defines the jurisdiction, therefore the jurisdiction will be only as wide as the signatories at the beginning will consent to make it. It is in their control. They are not being asked to clothe a court with a roving jurisdiction. They mark out in advance the limitations within which the court may operate.

Moreover, each nation's safety from injustice is further assured by the fact that the court stands upon its own feet, as an absolutely independent institution, holding no relation whatever to any individual nation, or to any group of nations, or to the league of nations, or to *any* political or military body. It is not part of the league system—it is its own system. Such a court *is* the world juridically organized for peace. Whatever other organizations for peace may exist, they are not part of this court, and this court is not part of them. That there will be need of such other organizations—a non-military league of nations, if you will—is obvious. The number of dis-

putes handled and settled out of court by the functioning of such formally political or other informal agencies will in every probability greatly exceed the number tried by the court. It is ever so. But these organizations will have no dealings with this court. This court will have dealings, like any real court of law, *only with litigants*. It will know no one else. Its litigants will be nations, not individuals or any other corporate entities, but sovereign states. It will therefore not be asked to give advisory opinions to any nation or league. The only kind of opinions it will give will be handed down as decisions when two states try a suit at its bar, or themselves ask jointly for a judicial decision on a submitted question of law.

Such a court will be located *beyond* the league, not on *this side* of the league, or on the margin of the league. In a figure, it will be built on the summit of the hill, and will stand there in lonely jurisdiction, while all other agencies for peace—leagues, arbitration boards, conferences, what not—will find their places on the slope. A dispute which has made its way past all diplomatic, or political, or arbitral attempts at a solution, until it has reached the top of the hill of justice, will there be heard and the judgment there pronounced will be final.

III. A WORLD COURT OF PEACE

In all this discussion about one court being better

than another court there is danger that our main purpose shall be obscured or absorbed in the fascinating theme of courts as such. One court *better* than another? But better for what? We are not here interested in courts as such. A mere desire for justice in general is not what draws reader and author together between the pages of this book. Our mutual interest is to abolish war. We are discussing courts only because we are interested in peace. Without question we cannot hope to have world peace without a world court. So when we say one court is better than another court, we mean *better for peace.*

And yet this word "better" in this context is itself misleading. For I am not saying that the kind of court I have been describing is a better court for peace than is the league court: I am saying that the league court is not good for peace at all! I am saying that it does not meet any vital requirement of a world court of peace. It fails at the moment when it is most needed. It has no jurisdiction—except when jurisdiction is of no value to world peace; that is to say, when disputants voluntarily agree to bring their trouble to it. But this means that the threat of war has by that time passed, or has never arisen. If disputant nations refuse its jurisdiction, or if one of them refuses, the court is impotent. But it is just then that it ought to have power to reach out with affirmative jurisdiction and summon the offending nation to answer the charges of the

complainant. Only the clothing of the court with that power can make of it a court of peace.

But, again, it must not be clothed with jurisdiction unless it has first been equipped with a code of the laws of peace. And the league court has no such code. It has no *code* at all. And such laws as are at its disposal are, three-fourths of them, laws—the unspeakable irony of it!—laws of war! How can a court be imagined to be a court of peace when it has no code of the laws of peace?

Let us keep reminding ourselves that we are here interested in codes and laws not because we are lawyers or students of law, but because we are peace-seekers and students of peace. We desire to put something effectual in the place where war now is. That something must be a court with a code of law. It cannot be a tribunal whose chief virtue is the fact that it is composed of a permanent body of judges, of however distinguished a personnel. The nations never will yield jurisdiction to such a tribunal. And they ought not, for such a tribunal, if it possessed compulsory jurisdiction, would create a refuge under which nations could provocatively meddle with the internal affairs of other nations in ways that would drive the most honorable of them to break their covenant against war rather than put up with such meddling. Such a tribunal, therefore, cannot be a world court of peace.

And finally, how can the league court be imagined

to be a court of peace when it undertakes to function for nations which exalt war as their most legal institution? The motive behind such a court cannot be a sincere peace motive, else those nations creating it would be willing to cast down war from its most honorable legal status. A peace court must *presuppose* peace. It cannot function to *achieve* peace. It must rest upon a peace situation of which it forthwith becomes the majestic and climacteric administrator. It can function for peace only as it draws its first breath in an atmosphere from which war has been expelled. The nations creating the league court have made no provision for this renunciation and disestablishment of war. Mars still stands in the shadow of this feeble, subject tribunal, ready to take the case from its jurisdiction within three months after the court's decision, and ready also to take the field under the league's direction to enforce that decision. This is not peace; it is war. It is a mere euphemism, another diplomatic illusion, that such a tribunal should be called a court of world peace.

It is, I say again, no question of a good court or a better one. The outlawry of war court, sketched in these pages, is not "better" than the league court; it is a wholly different kind of court. It is not a perfect court; it is only the *beginning* of a world court, the minimum in structure and code and jurisdiction which the war-haunted minds of the nations

may hopefully be asked to support. But it rests upon sound juridical foundations, and therefore can grow in adequacy as the fear of war recedes and the habit of mutual trust becomes established among the nations.

It is a real world court of peace.

And it *can* function as a substitute for war.

Chapter IX

A CODE OF THE LAWS OF PEACE

CRITICS of the proposal to build a real world court on the foundation of the outlawry of war rest their case chiefly upon the alleged impossibility of codifying international law except gradually, over a long period of time. They profess the desire to do something at once for peace and resent as an "obstructionist" proposal this coupling of the world court with the codifying of international law. Codification is a slow, evolutionary process, they declare. It waits for its development on the trials of actual cases, whose decisions become precedents and acquire cumulative authority. International law is called an "organic" thing, whose growth must not be hurried, but must be left largely to itself. It will take a hundred years to evolve a code, says one writer. Some put it even farther off. The most generous critics concede that it might be accomplished in fifty years.

Without argument, if this is what codification involves, the procedure advocated in these pages is not merely premature, it is a mockery of the peace hope of our time. For a code of law is of the genius of the outlawry proposal. All plans conceived by European statesmanship move, as we have seen, on the

plane of arbitration; it is the distinction of this American proposal that it moves on the plane of law. Its advocates hold that there is but one conceivable alternative to the use of war and that is law, real law, embodied in a real court. And if we are unable to equip a court with a definite body of recognized law, we do not have a real court at all. So that if the widespread conception of the slow development of international law involves all that may be said on the subject, the thesis of this book, so far as the court is concerned, is a waste of words.

I. THE PEACEMAKER'S POINT OF VIEW

But the current conception does not involve all that may be said. Indeed, it omits the one thing that is essential. Our peace orthodoxy, reflecting again the European state of mind, has never faced the problem of codification from the point of view in which alone the peace movement has a right to be interested in it. The thinking of our peace leaders on this question has been vitiated by adherence to the point of view of scholarly specialists in international law. These men are lawyers, jurists, political scientists, who envisage the whole sweep of international relationships historically. International law is international law—it all looks alike to them. From their survey of past processes and their analysis of contemporary results, they derive an overwhelming impression of the time factor in the progress of the

subject matter with which their science deals. They envisage in their field the incursion of no essentially new factor to change the rate of progress or the direction of progress. This is no derogation of scholarship. It is not to say that scholars in international law are incapable of envisaging such a new factor, for they are more capable of doing so than uncritical minds. But it is not their business, as scientific students of international law, to take account of new factors until such new factors have actually appeared. Their interest, I repeat, is in international law, as such, and they report to us what they find to be the facts in their field of interest.

But the peace thinker, as such, is not primarily interested in international law at all, in this academic sense. He is interested in *peace*. His whole purpose is to abolish war. He is not concerned with any body of fact or truth whatever except as it is relevant to this interest and purpose. He therefore should approach the field of international law not as an academic student or scholar, but as a builder of peace. He loses his orientation in his own task when he allows himself to adopt the point of view of men engaged in any other task. They are experts in their task. He must be expert in his. His task is no less scientific than theirs. But his practical purpose may cut straight across their field like the appearance of a huge new planet in the solar system, throwing the entire system into new orbits.

There is nothing invidious in this contrast between the specialist in international law and the specialist in peace building. It is in the spirit of no cheap sneering at scholarship that I insist that the peace builder must approach codification from his own point of view and with his own pragmatic end definitely in mind. Indeed, the peace expert in all this matter of codification must himself be none other than the scholar in the field of international law. The peace movement is dependent upon the international lawyer for the creation of a code of international law. But the international lawyer can perform his service to peace only as he keeps his special task as a peace specialist from being smothered and lost under his erudition.

II. THE LEAGUE AND CODIFICATION

Let us be reminded of the treatment which codification has received at the hands of the league of nations. In pursuance of its covenant, the league appointed in 1919 a committee of jurists to frame the statute of a permanent international court. Of this committee Mr. Elihu Root, of the United States, was a member, in his personal capacity, though not as a representative of his country. In presenting its report to the assembly of the league, the committee recommended not merely the establishment of a court, but the equipping of the court with a more complete and definite body of law upon which its de-

cisions should be based. The committee accordingly recommended that an international conference be called as early as possible "to restate the existing rules of law, to formulate the alterations that had become necessary in consequence of the changed conditions of international society resulting especially from the war, to remove the divergencies of opinion which now exist and to provide new rules governing international relationships which are not now regulated at all or only inadequately regulated."

This recommendation, written, it is known, and championed in the committee, by Mr. Root, was rejected by the league because of the opposition of certain delegates led by Viscount Cecil, who gave as their reason that "the time was not ripe for the codification of international law." That act of the league in rejecting the principle of a code as part and parcel of the peace ideal entered into the thinking of the entire peace movement associated with the league system. The movement for codification was then split off from the peace movement and thrown back into the channels of academic scholarship and jurists' societies where the slow evolutionary conception, rightly enough, dominates. And the orthodox peace movement, suffering serious mental obfuscation by its capitulation to the difficulties involved in codification, went on its way on the assumption that such codification must be deferred too far in the future to be of any help in our present time of need. A court

was established without a code. In America, where the codification movement had made greater headway than in Europe, all conspicuous league and world court advocates formed the habit of scouting as "obstructive" the idea of associating codification with a present world court.

Nevertheless, the movement for codification was kept alive, supported by such able jurists as Mr. Root, the late Senator Knox, Senator Borah, Judge Simeon Baldwin, Judge E. O. Brown, and Dr. James Brown Scott. In 1923, before the Canadian Bar Association, former Secretary Hughes made a plea for codification. President Coolidge endorsed the movement in a message to congress. A proposal was presented to the national house of representatives for the calling of a third Hague conference for the purpose of codifying international law. This bill has the support of many congressmen, led by the Hon. Stephen G. Porter, chairman of the committee on foreign affairs. Learned societies of jurists continued to pass resolutions and to take practical steps indicating that they regard the codification of international law as one of the most urgent matters in their field of interest. The league of nations, finally influenced by the agitation to make some gesture of interest in the problem, appointed a committee to consider the possibility of codification, whose first report, presented in 1925, I shall refer to at a later point in this chapter.

III. SIMPLIFYING THE CODIFICATION TASK

I have been distinguishing the peace builder's point of view from the international jurist's point of view. The one is academic, in the noble sense of scientific scholarship. The other is practical, involving the attainment of a specific end. What then, is the peace builder's point of view? It is infinitely more than a truism to say that his point of view is *peace*. He is not interested in international law *qua* international law, nor in codification *qua* codification. The codifiers of international law, with their task set before them by virtue of a universal treaty outlawing war, would be guided by no mere academic conventions, but by the practical objective of equipping a world court with a working body of law. They would not confront the task of codification *in general*. If that task requires a hundred years, it will not affect their specific instructions. They would be asked as experts to answer this question: Can a *sufficient* body of international law be formulated and agreed upon to set a real world court going? They will not be asked to codify the *whole body* of law, but only *relevant* law, covering a *sufficient* scope of international jurisprudence to warrant the clothing of such a court with affirmative jurisdiction.

Approaching this task with this specific purpose in view, a body of jurists will find the field of international law narrowed and simplified, *for their purpose*, in an unexpected manner.

In the first place, the codifiers will find their task enormously simplified by the fact that, with war outlawed, they can and must wholly disregard the laws of war. They are to concern themselves only with laws of peace. Here is where the orthodox peace movement has lost its bearings in the matter of codification. The assumption upon which it proceeds is that the whole field of international law must be covered, laws of war as well as laws of peace. This is the assumption underlying all league of nations thinking on this subject. There is ample warrant for their long-time, evolutionary conception if the whole vast body of international law is to be codified. Many wars can occur before that is done. Civilization itself would have time enough to go into the abyss.

The important thing which critics of the outlawry proposal overlook is that at least three-fourths of the existing, unorganized, ill-adapted, partially obsolete, obscure, ambiguous, and self-contradictory mass of so-called international law consists of laws and rules of *war*.

A codification commission proceeding on the presupposition that war is to be outlawed would consign the whole body of laws of war to the junk-heap. The remaining one-fourth, plus the laws of peace, dealing with situations for the most part in which there obtain well-established principles of equity accepted not only in the international sphere but in the

internal jurisprudence of all civilized states, could be codified and unified for a warless society in a mere fraction of the time required to codify the whole.

Professor James W. Garner, authority on international law in the University of Illinois, seems to contemplate something like this when he says: "Unfortunately our international jurists and statesmen have been more preoccupied with the formulation of rules for the regulation of the conduct of war than they have been with the building up of a body of law for the regulation of the relations of states in time of peace." The distinction is fundamental to the codification project. It is not Grotius' task which the nations today confront. Three hundred years ago he performed a service for the world which will always be remembered with gratitude. His monumental work was called "Laws of Peace and War." And it was chiefly war. Ours is an incomparably simpler task than his. We do not wish the laws of war codified, any more than we desire the standards and methods of murder or piracy or slavery codified. We wish the war system taken clean out of the legal system of mankind. For us today, the task of codification is that of collecting, and harmonizing, and revising, and formulating the laws of peace—a difficult enough undertaking, as even the layman knows, but much simpler than it would be were the laws regulating the institution of war included.

IV. THE PRINCIPLE OF PRACTICAL SUFFICIENCY

But there is a further simplification of the codifiers' task which the peace point of view involves. The codifiers do not have to make an all-inclusive code even of the laws of peace. Here the principle of *sufficiency* must be applied. Their question is: Can a sufficient body of the laws of peace be formulated wherewith to equip a world court with a working body of law? There are many hard problems to be solved in this field. There are conflicting national interests and conflicting conceptions of right even in this narrower field of the laws of peace. Not all these interests and problems could be resolved. Some questions would have to be left outside the code to be settled by further conference and by the development of international understanding. But is there a sufficient body of law already agreed upon —or to which the nations may reasonably be expected to agree when the codifiers formulate it and present it—to enable a world court to function as a real court clothed with jurisdiction under it? If the codifiers make it as good and as comprehensive as they *can* make it, will it be competent to function in the practical purpose to which it is to be put?

That is the point of view which a convention of jurists acting, not under a general standard but a specific peace standard, would adopt. They would cut straight across the field of international law in general. They would start at the heart of their task

and follow in every direction the lines of least resistance. They would be seeking a maximum upon which the nations can agree, in the hope that when it is presented it might prove acceptable as an initial working minimum for a real world court.

How, then, is the sufficiency of such a minimum code to be determined?

It will be determined by asking two questions: First, Is such a code substantial enough, and complete enough, to assure the nations that in outlawing the institution of war they will have an institution of peace available to which they can resort in reasonable confidence that it will mete out justice to all alike? And secondly, Is such a code substantial enough and complete enough to warrant the nations in clothing the court with real jurisdiction? It is not a question of the size of the code, or its completeness—*it is a question of its practical sufficiency.*

How many articles setting forth principles of equity in international relationships, and how many specific statutes covering concrete situations would be included in such a code, no one, not even the international jurists themselves, now knows. But whether there be only three, or thirty, or three hundred, or three thousand, does not matter. A code of international law, like every code of law, will always be incomplete—always only as complete as it can be made! But the practical sufficiency of this code must be measured in the light of the fact that war

will have been outlawed. *It is not perfection in the code that warrants the clothing of the court with affirmative jurisdiction, but the fact that war has been renounced and made a crime.* On that basis a practicable and sufficient code will be attainable even though it falls far short of academic perfection.

And how can it be known that a code possessing only the degree of completeness which we are at this date able to attain will be sufficient to equip a world court and to clothe it with affirmative jurisdiction? It can only be known by actually submitting a draft code to the nations for their approval, a code formulated by an international convention of jurists and other specialists appointed by the nations for this purpose in connection with an international treaty outlawing war.

Who can doubt that such a code can be created? The whole problem of codification would appear in a new light the moment the nations adopt a treaty outlawing war. It is no such awesome task as we have been led to believe. Its magnitude and subtlety are in a large measure due to the entrenchment of the war system in the system of international law. It required only four months to create the constitution of the United States. Without minimizing the gravity of the undertaking, but with full acknowledgment of its difficulty, I say that the creating of a code of the international laws of peace differs in character so widely from, and is so much simpler

than, the codification of international law in general that they are two wholly different undertakings.

V. ONE TYPE OF CODIFICATION

Happily we have at hand two illustrations throwing, one a negative, the other a positive, light upon our thesis. We were reminded some pages back that the assembly of the league of nations rejected Mr. Root's proposal in 1920 for codification. But in 1924 the assembly affirmed a desire for what it called a "progressive codification," and requested the council to appoint a committee of jurists, representing the principal civilizations and legal systems of the world, to prepare a list of matters concerning which there was most urgent need for regulation and to report the same to the council with plans and suggestions as to the most practical and effective mode of procedure to carry forward the work of codification. This was done. The committee met at Rome in 1924 and at Geneva in 1925. It included on its membership one American. Returning from the Geneva sitting of the committee at the moment when Senator Borah was demanding that America's adherence to the world court be based upon a codification of international law, this American committeeman scornfully declared that such a proposal was "the most utter nonsense." In an official document issued by an influential church organization, of which he was also a committeeman, he declared that the codification

would require a long, long time, that it had to proceed by the slow process of evolution. Through the pro-league press he heralded with much éclat the report which he brought back from the Geneva meeting of his codification committee. From all the range of international relationships the committee, he said, had chosen four subjects which it considered "ripe" for codification. They are: (1) international law in territorial waters; (2) the question of double nationality and no nationality; (3) a law to be applied to ships which are owned or managed by governments, and (4) the general problem of extradition.

This, I submit, in none too virtuous restraint of an incipient impulse to use extreme language, but with an impatience which I cannot hide, is grave and mighty business, full of state and awe! These fifteen gentlemen who gathered from distant nations at Geneva to open up the question of codifying international law must have spent most of their time playing golf and pinochle. And what did they propose to do with these four helpless little subjects which they had pounced upon between games? Did they propose to do anything at codifying? Hardly. They adopted a procedure by which a subject is to be "allocated" to some one member of the commission for "specialized study," with the understanding that he will present a "complete exposition" of the subject assigned to him; he will bring to his aid the "entire

body of knowledge of jurisprudence organizations" of his particular country; in addition to "a complete statement" of law already recognized by the established customs of nations the "specialist" will present concrete suggestions as to "new laws required," if any, and "recommendations" as to whether the matter shall be treated by "formal agreement" between states. These "statements"—keep your eye open, reader!—on the various subjects assigned—one, two, three and four, above—will, when completed "several months hence," be submitted to the commission when it meets again, then to the council of the league, and "eventually" to all the governments—for their *observations!*

This is to be an evolutionary process sure enough. I would say that we have here under our microscope the original amœba of a code of international law! I record the fact now in this place, hoping that a stray copy of this book may be in existence a hundred years hence, and that it will afford proof to put to rout some W. J. Bryan of that era who tries to make out a case against the evolutionary theory of international law. People who really believe in peace and who keep their heads in all the swirl of erudition associated with the codification of international law can safely leave the league of nations and its committee of specialists to chew as long and as pedantically as they wish on this nice little quid. The genuine peace mind makes a different approach.

VI. ANOTHER TYPE OF CODIFICATION

Having looked on that picture of codification I ask them to look now on this. It is the picture of another activity in the field of international law. This activity concerns not the whole world, but a half of it—this western hemisphere, the Americas, North, Central and South. Specifically, the Pan-American union has undertaken the immensely significant task of creating a code of international law for all these American republics. To this end an international commission of jurists was appointed, which has sought the cooperation of the American institute of international law, whose sub-committee made a report of some thirty "projects," or conventions regulating the inter-relationships of these American republics. In a covering letter under date of March 21, 1925, addressed to Charles Evans Hughes, chairman of the governing board of the Pan-American union, Professor James Brown Scott, for the committee, points out the basis upon which the draft has been made. He says:

> The members were of the opinion that the law of war should find no place in the relations of the American republics with one another, as war would be—if pan-Americanism is more than a word—little less than civil war. . . . The members of the executive committee and of the institute present at Lima were therefore a unit in believing that only the law of peace should be considered, as peace should be, and in fact is, the normal state of affairs.

This states a principle and a method which go to the heart of the problem of codifying international law. If the league of nations' commission, to whose report we have just referred, had had the insight and statesmanship to formulate this single principle alone, its members might have played their game of pinochle all the rest of the time at Geneva and they would still have deserved one of the numerous prizes nowadays being awarded in the name of peace. But the Pan-American union, however, does not stop with this fundamental revolutionary principle. They go forward in the way their principles point, and actually formulate a draft code in which the great pivotal interests and concepts of the nations are considered, and a system of relationships based on equity and neighborliness is projected under thirty heads. Every one of these would bear study and would kindle intense interest even in the lay mind. We cannot consider them here in any detail. But at the very close of the draft code, under project number 30, headed "Conquest," there is set down a practical application of the basic method of refusing to consider rules of war as having any place in a code of international law. If the laws of war have no place in an international code, it follows as the night the day that territorial gains by means of war must not be given valid title by an international code. So Project number 30 reads thus:

The American republics . . . animated by the desire

of preserving the peace and prosperity of the continent, for which it is indispensable that their mutual relations be based upon principles of justice and upon respect for law, solemnly declare as a fundamental concept of American international law that, without criticizing territorial acquisitions effected in the past, and without reference to existing controversies. . . .

In the future, territorial acquisitions obtained by means of war or under the menace of war or in the presence of an armed force, to the detriment of any American republic, shall not be lawful; and that—

Consequently territorial acquisitions effected in the future by these means cannot be invoked as conferring title; and that—

Those obtained in the future by such means shall be considered null in fact and in law.

Never before in history have governments even so much as considered the legal aspects of their territorial gains through successful war. Here at last, in this pan-American draft code, the war system, while not outlawed, faces for the first time in a proposed code of law the kind of fate that awaits it when it shall be so outlawed.

Contrast this with the league's codification procedure. It is clear that the league of nations is merely perpetrating another judicial hoax upon world public opinion. From the beginning, the league's attitude toward a genuine juridical organization of the nations under a court with a code has been that "the time was not ripe for the codification of international

law." Manifestly if international law is to be codified at all, it must be done outside the league of nations, unless the league reverses its entire attitude on codification.

This is a reason why those who keep their peace purpose in the front of their minds in dealing with codification will take a sympathetic interest in the proposal to call a third Hague conference for the codification of international law. Such a reassembling of the Hague conference had been projected for 1915, and was upset by the war. Our statesmen can do a great service to world peace by reviving as a deferred meeting the Hague conference of 1915. One thing is sure to happen there. A proposal to write into the code as the basic law of nations a statute making war a crime is certain to be introduced. When it is discussed, with doors wide open so the world public may hear, it will be an interesting moment, to put it mildly, when the representative of any civilized nation, whose mothers and taxpayers are listening in, rises to oppose it! If it is not adopted, the task of codification will prove to be enormous, complex, pregnant of actual strife, and perhaps in the end futile. But if it is adopted, it will with one stroke reduce the task to manageable proportions and simplify it in terms of the specific practical purpose of creating a code of the laws of peace. This purpose may be attained even though the code may not be complete.

It will now be clear that the proposal to outlaw war realizes the ideal of a *progressive* codification, and is the only conception of world peace now extant which does so. The code, once it is adopted, becomes the "growing point" of an ever widening understanding among the nations. Starting with the barest maximum of principles of equity and specific statutes upon which the nations in their present suspicious and uncertain mood can agree, but which maximum of agreement is a sufficient minimum with which to warrant their clothing a court with jurisdiction, there will thereafter continually arise new principles of right upon which the nations can agree, and new formulations for meeting concrete problems. These principles and statutes will be continually added to the code. The code will thus register and reflect the increasing confidence in which the nations find themselves able to live together without war or the threat of it. It will be a living, organic, growing code, revised and enlarged periodically by the same kind of international agreement as that by which it was adopted and launched in its original form.

Chapter X

THE "ENFORCEMENT" OF PEACE

WE come now, in our consideration of the technique of outlawing war, to the question of enforcement, or, in the vocabulary of modern diplomacy, of "sanctions." The adoption of this word into the vocabulary of peace-making is characteristic of that dissimulation of which the peace movement is made the victim when it follows the lead of conventional diplomacy and forgets its own essential business of getting rid of war. Here is a word taken indirectly from religion, derived from *sanctus*, a word "redolent of the altar," which has been "circuitously conscripted" by the diplomacy of the war system to mask the use of war itself. "Sanctions" in international parlance mean war—the enforcement of an international agreement by the use of military power. Sometimes it is *ex parte* war, as in the Ruhr, sometimes it is economic blockade; theoretically it is the imminent threat of war kept discreetly but potently hidden in the background, but always it is the substantial equivalent of war set up and legalized for purposes of punishing a nation accused of breaking the common covenant, compelling it to "keep the peace" and otherwise to conform to the international

system. Sanctions mean simply "the physical enforcement of crushing penalties, administered under the war system." They are a logical and consistent part of the league-to-enforce-peace method of abolishing war.

All European schemes that have been put forward in the name of peace have included this final appeal to war under the euphemism of sanctions. A military alliance of course provides that the offending nation would be attacked at once by the other members of the alliance. The league of nations provides in the terms of its covenant for the mobilization of the military forces of the nations against such an offender to compel him to keep the peace. The Geneva protocol of 1924 was an attempt to elaborate the mechanism of the league so as to make more prompt and sure the military operations of the league against a disturber. Locarno provides that if Germany attacks France, England and Italy will come to the help of France; if France attacks Germany, they will come to the help of Germany. These attempts at organizing the world for peace presuppose the necessity of retaining the war system under the category of sanctions as an "international police" for purposes of bringing an offender to terms. And those whose minds are schooled in the habit of conceiving the international situation in terms in which the institutional status of war remains unchanged, find it difficult to accept a peace proposal which is

not backed up by overwhelming force. Such minds may follow the proposal to outlaw war up to this point with interest, and even with a high degree of conviction. But here they are arrested. From the background of their habitual thinking there emerges the question, How are you going to enforce this outlawry of war? What sanctions do you provide? What are the penalties of its violation? Reasoning from the analogy of civil life, they see a court on an international scale, but they see also a sheriff, acting as the agent of the court to bring offenders to its bar, and upon its authority to lock them in jail or hang them by the neck until dead. Where, now, they ask the outlawrist, is your sheriff, the agent of your world court empowered to enforce its judgments and to execute its penalties?

I. WHERE ARE THE SANCTIONS?

I desire honestly and critically to face this question. In order to make it concrete, let us assume that the procedure for outlawing war as set forth in previous chapters has been consummated; that the nations of the world have condemned and abandoned the war system by ratification of a simple international treaty in which they unequivocally renounce forever their immemorial right to resort to war; that this delegalization of war has been formally registered in the primary statutes of a code, making it a public crime; that this code has been ratified by the

nations; and that a world court of peace has been established which the nations have solemnly clothed with jurisdiction over all disputes covered by the code or arising under treaties, which do not yield to diplomatic or other voluntary settlement. Let it be assumed that this mechanism, backed by the plighted word of the nations, has been actually established and set going. Suppose, now, that a nation goes back on its word, repudiates the jurisdiction of the court, and starts war against another nation. How does the outlawry system provide for meeting such a crisis? Where are its sanctions?

Let me answer at once. In the sense in which the term is used, there are no sanctions. The outlawry of war makes no provision for a sheriff. It has no place for an "international police" to enforce obedience on the part of sovereign nations. It wholly repudiates the appeal to war as a means of keeping the peace. It confesses without apology that it entrusts its whole enterprise of peace to the good faith of the nations who share in it.

This seems to the average mind an incurable weakness in the outlawry proposal. To entrust the peace of the world, in the words of Senator Borah's resolution, to "the respect of all enlightened nations for judgments resting upon open and fair investigations and impartial decisions, the agreement of the nations to abide and be bound by such judgments, and the compelling power of enlightened public opinion,"

seems visionary and fantastic. Peace must be enforced, it is declared, enforced by sword and cannon, army and navy, irresistible and overwhelming military power, either actually used or in the background constantly ready for use. President Wilson expounded this view when he called article x "the heart of the covenant," and later when, describing the genius of the league of nations, he declared: "There is only one way to insure the world of peace; that is by making it so dangerous to break the peace that no other nation will have the audacity to attempt it."

The orthodox peace movement since the war has moved on this plane. Its dominating purpose has been to contrive such an organization of the nations that they could bring the overwhelming force of their united military strength against a nation that violated the common covenant to keep the peace. Force has been the real god of the peace movement. Peace must be *compelled*, and the war system is the agency of its compulsion. The task of peace, therefore, according to the orthodox view, is to lift the war system out of its exclusively nationalistic status, and universalize it, center its control at a world capital, from which it may be deployed hither and yon against a threatening or overt offender. Thus the peace movement has accepted the traditional view that the object of war is peace, and that if you can pile force on force by an alliance or league

of nations for that purpose you can compel peace.

The outlawry proposal moves on a wholly different level. It abjures the entire philosophy of military force, and rejects absolutely the delusion of war to end war. It rests its whole structure on the foundation of the honor and good faith of the peoples of the world. And it does so on grounds which are objective and altogether realistic. By this I mean that the point of view involves in no sense the pacifism of non-resistance, or any doctrine of the wickedness of force as such. Here again the outlawrist keeps his goal clearly in view. His goal is peace. He is not a doctrinaire as to the means of attaining it. Whatever means will secure peace, genuine peace, he is willing to adopt. He is a thoroughgoing pragmatist. And he rejects the whole methodology of military compulsion because it is unpragmatic; he sees that it is a delusion and a snare.

It is of prime importance that this chapter shall be read with this distinction clearly in mind. The outlawry of war movement is not a pacifist movement, in the sense in which that term is currently used. It includes pacifists in its ranks, but it also includes those who are by no means convinced that a nation should not, so long as the war system is with us, be reasonably well prepared to defend itself in war. The whole controversy over pacifism is neither affected nor involved in the movement to outlaw war. Therefore, when the outlawrist says that the

philosophy of peace by force is fallacious, and that a world organized for peace can rest only upon the plighted word of the nations, he speaks not as a pacifist but as a pragmatist, not as a perfectionist but as a practical realist.

II. STRENGTH OF THE PLIGHTED WORD

Under three headings I wish to present the outlawrist's view of sanctions, and the reasons why he bases his world organization for peace upon the plighted word of the nations, and upon that alone.

1. Our existing relationships of international understanding rest, and have always rested, upon mutual good faith, and upon nothing else.

2. There is no conceivable alternative to the plighted word.

3. Under an outlawry system the plighted word has far greater value and potency than under a system which provides for or presupposes war.

1. Mutual Good Faith Expressed in Treaties

In considering the accepted relationships now obtaining between nations, I have in mind the definite arrangements which nations enter into with one another by means of treaties. The treaty is an age-old method by which two or more nations reach a basis of understanding. Treaties (excepting only victorious peace treaties) are mutual promises, nothing else. They are contracts between nations, dealing with one

another's most vital interests, involving the most far-reaching commitments; yet they rest upon the mutual assumption that each party to the contract may be trusted to keep the faith. Sanctions are not provided, and in the nature of the case could not be provided. The plighted word of one nation is accepted at its face value by the other. I say that in the nature of the case sanctions could not apply to a bilateral treaty. Mr. Levinson has made this so clear in an article published in 1925, "Can Peace be Enforced?" that I quote the skeleton of his analysis:

> Let us say that nations A and B enter into such a treaty compact. How is such a treaty to be enforced or its breach punished? Where are the sanctions? There are three relative positions of strength between nations A and B, namely:
>
> 1—A may be the exact equal of B;
>
> 2—A may be stronger than B;
>
> 3—B may be stronger than A.
>
> In the first supposition manifestly neither can enforce the compact nor punish for a breach; in the second B cannot enforce or punish; and in the third A cannot enforce or punish. Thus it is clear that sanctions are not feasible or possible in contractual treaties.

In trusting the plighted word of the nations in the outlawry system of establishing peace, we are doing only what the nations have always done, and are now doing, in accepting one another's promise as honorable and trustworthy in contractual treaties. The whole international order is interlaced with these

treaties, covering every kind of subject, and yet no one has ever thought to challenge them on the ground that they contain no sanctions. These treaties mark the highest attainment in the relationships of nations. Shall we allow ourselves to say that the plighted word of the nations may be trusted in every kind of matter under heaven, but when it comes to their mutual promise to abandon the mutually destructive institution of war it is untrustworthy?

Moreover, as a matter of fact, the nations keep their treaty contracts in good faith. When it is considered how little share the peoples themselves have had in the making of their treaties, how the governments of the day conclude compacts with other governments, not always on grounds of justice or even fair compromise, but of expediency, or of superior force, or as war settlements, or as merely temporary arrangements to bridge over a crisis—when all this is taken into account it is really amazing that the nations display so much honor as they do in keeping their treaties. But even so, the supremely important thing to say about the breaking of treaties is that when they are broken they are broken under the operation of the war system! The honor of the nations is well-nigh one hundred per cent except for those instances when it has abdicated in favor of the legalized tyranny of war. And with war legal, and honorable, and holy, the sense of real honor in the nations is so obscured and confused when war takes charge that

the breach of a treaty under the holier law of military necessity is deemed no dishonor.

Mr. Ponsonby testifies that he has made an induction of the forty-three major wars of the past hundred years, and that not one of them has been caused by the violation of a treaty. All the world now knows that the violation of Belgium's neutrality had nothing to do with causing the late war. The treaty was broken after war was declared, and as a war measure. The violation of this treaty was not even the cause of England's entrance into the war, but was used in the *ex post facto* process of rationalization and popularization which the war-obsessed mind always performs with diabolic genius.

This is not the place to discuss causes of war, as such, or of any particular war; my purpose in alluding to the violation of this particular treaty is to illustrate the thesis that the good faith of nations is dependable, *except when it is broken down by the lawful pretensions of the war system to a superior allegiance.* It is war that makes nations repudiate their word of honor—and they do so under stress of a conscience obfuscated by the very legality and righteousness of the claims of war which, under an outlawry system, the nations would have solemnly abjured. The whole history of international treaty-making and treaty-keeping—leaving the war chapters out of account—creates not only a fair, but an overwhelming, presumption that nations entering into a

treaty renouncing war could be trusted to keep their word.

2. *No Alternative to the Plighted Word*

When I say there is no alternative to the plighted word, I do not mean that there is no alternative for the outlawrist alone; I mean that there is no alternative for anybody. I mean that there is no conceivable plan for world peace which must not at last rest upon the plighted word. The critics of outlawry who hesitate to give it their support because it provides no sanctions beyond the good faith of the nations, have not thought very deeply into their own schemes or they would see how illusory and fallacious their sanctions are. The truth is that the league of nations, Locarno and all military alliances rest upon the good faith of the nations, and upon nothing else. Where, for example, are the sanctions for Locarno? Let us look at it concretely. Disregarding all the nations involved save only Germany, France and England, let us suppose a crisis arising over Germany's western boundary. England has promised to come to the aid of France if Germany attacks her, of Germany if France attacks her. Let us suppose that France calls upon England for assistance under the Locarno pact. And suppose England does not respond! How are you going to compel England to respond, to send an army to aid France under the treaty? How are you going to

enforce this military alliance? Where now are the sanctions? Suppose another sort of crisis, and it is Germany who this time calls upon England for help against France under the Locarno pact. And suppose England does not respond! How are you going to compel England to keep her word? Where are the sanctions? There are none. There absolutely are none. The whole vaunted Locarno pact with the elaborate sanctions rests on the pledge of honor which England has given to go to the support of the "aggressed" nation.

If England and Italy may be trusted to keep their pledge to go to war—to a war that is not directly their war—in the name of reason, may they not be trusted to keep a pledge *not* to go to war?

Consider the league of nations. Under articles VIII, X and XVI, the members of the league assume obligations to protect one another's territorial integrity, to enforce by united military action their international obligations, and to sever all financial, commercial or personal intercourse between a covenant-breaking nation and other nations. These are the sanctions by which it is assumed the league of nations is enabled to make it "so dangerous to break the peace that no nation will have the audacity to attempt it." The arrangement sounds formidable indeed. But just how formidable is it? How much awe may it be expected to strike to the heart of a threatening covenant-breaker? It will awe him in

just the degree in which the plighted word of the nations party to the covenant may be depended upon —and no more.

The whole arrangement rests upon the good faith of the nations. If they come forward with their military forces when called upon by the council of the league, they may be able effectually to restrain or stop or punish the offender. But suppose they do not respond! Where are the sanctions? There are none! There is no way to compel a nation to come forward in pursuance of its agreement to furnish troops. The entire scheme rests upon the "idealistic" and "visionary" basis of the plighted word. If the nations keep their word, the sanctions may operate, but if they do not keep their word the sanctions crumble. It comes down to this: any scheme contemplating the employment of the war system to enforce peace depends upon the good faith of the nations which are party to it. The execution of such a scheme possesses no advantage whatever over the outlawry system. Both rest at bottom upon the plighted word. There is no alternative.

If the nations, I repeat, may be depended upon to keep their covenant *to go* to war, a war that is none of their direct concern, in the name of common sense may they not be depended upon to keep their covenant *not* to go to war?

But this is not the end of the matter. We have not yet looked thoroughly enough into the compara-

tive implications of the military sanctions scheme and the outlawry of war system. For the nations *cannot* be depended upon to keep their covenant to go to war at the call of alliance or league. Military sanctions depend upon the pledged word just as outlawry depends upon the pledged word, *but we know in advance that the pledged word that is behind sanctions will not be kept.* We may be sure of it for four reasons.

First, we know that nations never have treated their obligations under any kind of military alliance as binding them beyond the point of self-interest. Italy, without a spark of compunction, and without drawing upon herself the slightest criticism from world public opinion, broke her covenant with the triple alliance and joined the entente in the late war. Under the war system it has ever been so.

Secondly, in the case of the league or any such alliance, these promises to provide sanctions presuppose that the offender against whom they are to be employed is a single nation, whereas the great war showed that future wars will almost inevitably be waged by large groups of nations on both sides. Each group will claim the mechanism of the league for its own, and insist that the other group is the covenant-breaker or the "aggressor." The upshot will be not only the failure of sanctions but the destruction of the league.

Thirdly, the war system, by its very nature, will

not lend itself to disinterested and "idealistic" service in keeping the peace. The genius of war ties it up indissolubly with nationalism. It cannot become an international function. The moment war is dissociated from the glamour and motive force of patriotism, it becomes flat, stale and unprofitable. It stands revealed as the disgusting thing it really is, when you attempt to offer it as an instrument of disinterested service to humanity. Modern war moves only in the channels of national self-interest. If the call of the alliance or league coincides with the nation's interest it may be heeded; if not it surely will not be heeded.

And fourthly, as we shall see in chapter XIV of this book, by their action in duplicating in the Locarno treaties the mutual guarantee and military sanctions features of the league covenant, the powers served notice on the world that *they did not intend* to keep the terms of the covenant. The repudiation of these obligations is not implied, merely, but notoriously confessed by British statesmen and publicists.

If peace is to put her trust in military sanctions, her cause is hopeless indeed. For the very attempt to execute such sanctions in the name of peace on the pledged honor of the nations vitiates what honor there is in the nations. When they are dealing with war in any form nations have no honor; their diplomatic promises are conceived in hypocrisy; their covenant obligations will be honored only when they

coincide with their national interests; their plighted word is false. Truth and honor do not, cannot, dwell in the same covenant with war.

3. A New Situation

We have seen that any scheme of military sanctions rests, after all, upon the same "idealistic" basis as that upon which the outlawry of war rests, namely, the word of the nations. But we have seen more. We have seen that the word of the nations has no truth in it when war is involved. But we have seen still more. We have seen that apart from war, in the long stretches of peace, and in situations where war does not threaten, the honorable carrying out of mutual undertakings expressed in treaties affords, in the main, a grateful commentary upon the nobility of mankind and the honor of nations. In normal intercourse, so far as it proceeds unvitiated by the diabolical influence of the war system, the most dependable and honorable promise in human society is the pledged word of a sovereign people. If the sanctions of force rest upon nothing but the plighted word; and if the fact that they are sanctions of force blights and vitiates the plighted word; and if the plighted word of sovereign peoples in all matters not involving military force is highly honorable and trustworthy, why not, I ask, build the peace enterprise on the basis of a plighted word which definitely and solemnly excludes and renounces war?

I am trying to speak realistically. I am trying to face the facts. I have flung aside every dogmatic consideration, and all merely subjective optimism about trusting human nature. A peaceful world, with sanctions or without sanctions, has no other conceivable foundation to rest upon but the good faith of the nations. It is that or nothing. If the solemn pledges of the peoples may not be trusted, we have come to the jumping-off place. The whole peace movement is folly. This brings us to the final consideration in our study of the sanctions of military force and the sanctions of the plighted word.

The outlawry system has an incomparably better chance to endure and to succeed than has any system which preserves the institution of war for purposes of enforcing peace. The logic of this is already obvious. But let us consider it more concretely.

The chief difficulty which people have in comprehending the proposal to outlaw war is due to their failure to envisage the new situation which will emerge directly upon the establishment of the outlawry system. They continue to visualize the world order of the present, and to see problems arising which will not be able to arise in a society from which war has been outlawed. Their trouble is due to their failure to conceive the outlawry proposal as the profoundly revolutionary thing it really is. I do not wish any reader of this book to make this mistake. He must have no notion that I am treating the task

of outlawing war as an afternoon's diversion. *This book is dealing with nothing short of a world revolution!* The outlawry of war involves a complete and radical reorientation of the nations in their international relationships.

There must be no misunderstanding here. The minds of author and reader will not have met at all in this discussion unless the revolutionary character of the outlawry proposal is made clear. Its establishment will mark a new dispensation in international affairs. To say that outlawry involves a revolution is not to admit, however, that it must therefore be long deferred. Our thesis is that it is a revolution for which the peoples are ready, yearningly ready, and wait only upon their leaders to show them the simple and direct way of its accomplishment.

When therefore we face the question of this chapter dealing with the "enforcement" of peace in a world from which the institution of war has been outlawed, it is of primary importance that we keep in mind the unprecedented situation which will arise with the establishment of the outlawry system. We are so accustomed to take war for granted, to think in terms of war settlements, war preparations, war obligations, war dangers, war disputes, that when one comes in from an opposite direction and talks in terms of a pacific world ruled by law, his hearer has just as much difficulty in visualizing the new order

as an old resident in a frontier mining town experiences in visualizing the effect of the court of law which is to be established in that town the next day. It is this difficulty which prompts the very question we are treating in this chapter. Where are your sanctions? asks the reader in impatience, if not in scorn. The question arises directly out of that war mentality of which none of us can divest himself save by almost herculean intellectual effort.

III. WAR THE SUPREME CAUSE OF WAR

As to whether the outlawry system, once established, can endure, that is, whether it is self-enforcing on the basis of the plighted word, there are three considerations which determine my own confidence. One of these has occupied us in previous pages, namely, that with war cast out of the legal system of mankind and solemnly renounced by international agreement, the honor of the nations would function at its maximum of dependableness. I would have no faith at all in the plighted word of a nation in the giving of which the supreme rights of the war system went unchallenged. I would have abundant faith in the plighted word of any nation which had definitely excluded the legal and moral possibility of war. Enough has been said in support of that position.

A second consideration upon which confidence rests is this: The disputes that will arise between

nations under the outlawry system will be wholly different in character and intensity from those which now drive nations to war. In current discussion much is being said about the *causes* of war. John Haynes Holmes has pointedly called our attention to the fact that no dispute is a cause of *war*. It is no more the cause of war than it is the cause of arbitration or adjudication or any other pacific settlement. But that disputes become, legitimately or illegitimately, the *occasion* of war will not be questioned. In attempting to envisage the world situation which would exist under an outlawry system, one is safe in saying that the occasions which now lead to war would be astonishingly reduced in number and intensity. Because, after all is said about the various so-called causes of war, *the most important "cause" of war is war itself.*

By this I do not refer to the competition in armaments, creating a psychology of threatening and fear. I mean something far more pervasive and inherent. The presence of the war system, as such, in the body of our organic national and international life stimulates national egoisms, and creates situations of dispute and friction which can only be resolved by war or the threat of war. This is the most infernal thing about the institution of war. *It feeds on itself.* The occasion which calls forth war's active exercise is itself, in large measure, bred by the war system. We are compelled to do certain things which mean

war or lead to war, because if we did not do them the way would be open for a potential enemy to attack us. These acts of ours may have no relation at all to our real and natural welfare, but only to the maintenance of our military position. Were the war system not inherent in the presuppositions and purposes of the nations the disputes which now lead to fighting would be enormously reduced. Abolish the institution of war and you will abolish most of the "causes" of war.

As I write there is trouble between the United States and Nicaragua. What is this trouble about? Why should the United States concern itself with Nicaraguan internal affairs? The answer is obvious and acknowledged. Because of its proximity to the Panama canal. And what is the Panama canal? A great trade route, of course. But the United States would have no reason to become excited over the effect of a political squabble in Nicaragua upon the canal as a trade route. The Panama canal is part of the war system of this country! It is in the interest of protecting and maintaining its war system that marines are landed in Nicaragua, and war threatens. Similarly, at the same moment there are strained relations with Mexico. The President, the secretary of state and the senate all rise in excitement to act against Mexico. On what grounds? The situation is complex, and there is more than one angle to the controversy, but it is generally agreed that the

Monroe doctrine is involved. And what is the Monroe doctrine? Part of the war system of the United States. There would be no Monroe doctrine were there no war system. The ultimate *raison d'etre* of this doctrine is to keep Europe from transplanting her warring national interests to this continent and so drawing the United States into the conflicts of the old world. We have to protect the Monroe doctrine by war, but it is war that produces the Monroe doctrine!

I am not speaking as an extremist. I do not say that there would be no disputes between nations if war were outlawed; the constructive purpose of this book is to provide an adequate tribunal before which such inevitable disputes may be settled in terms of law and justice. But I do say that the number and the intense character of the disputes would be greatly reduced with war cut out of the legal tissue of civilization. Take the economic "causes" of war. The war system is so intertwined with the far-flung economic adventures of modern commerce that it invests business with an insolence which is largely the effect of its adventitious partnership with military might. The wars which are said to spring from economic competition are really not the effect of natural economic conflict, but are induced artificially by the presence of military systems in association with competing economic interests. Left to itself, divorced from and no longer supported by the war system,

the world's international commerce would wear a changed countenance.

We thus have ample grounds—confessedly difficult to visualize with our war-haunted eyes, but becoming increasingly clear to sustained realistic reflection—for confidence that the outlawry organization of the world would be enormously helped in maintaining itself by the complete disappearance of the whole brood of artificial problems and disputes begotten by the war system, and by the alleviation of all other disputes as a result of the removal of the exacerbating presuppositions of war.

IV. RELEASE OF WORLD PUBLIC OPINION

A third consideration which creates confidence that peace, once truly and soundly established by the definitive outlawry of war, will be able to endure, arises from the reasonable expectation that the mighty forces of world opinion will be brought into their maximum functioning with the passing of the institution of war from society. The moral restraints of civilization have never had a fair chance to operate on an international scale, and they never will so long as the perfidious standards of the war system are legalized and honored. In previous pages I have dwelt upon the enhancement of the national sense of honor, the fidelity to the plighted word, which will ensue upon the destruction of war standards in international society. But this increase in moral self-

respect will be re-enforced by a corresponding increase in respect for the decent opinion of mankind.

The doctrine that law, even in our civil society, depends ultimately upon the sanctions of physical power no longer is accepted by our social philosophers. Communities and commonwealths are held together in an orderly system *ultimately* by the moral character of individuals, plus the restraints which operate through the complex social milieu in which the individual lives. Force is necessary in civil society, but it is incidental; its application is infinitesimal compared to the tremendous moral pressure exerted silently on the individual citizen through his compact social relationships. This public opinion is the ultimate ground of an orderly civil community. Force may be used against the criminal, but the force depends upon public opinion for its efficacy and its very existence. Our personal lives are all caught in the meshwork of a social order whose stimuli and restraints play upon us with invisible and unconscious power to hold us to the standards of decency. Break down this public opinion and the incidental instrument of physical force loses at once its potency.

When, now, we rise from the civil community to the level of international relationships, we are faced with a wholly different situation. Here we find the doctrine of force in riotous command. War is the bulking subject matter of all international relation-

ships. It dominates the world scene. It crushes and stifles the free and natural exercise of public opinion. Its legality and glory enable nations to act without conscience and without shame. Nations are indifferent to the opinion of their neighbors as they take refuge behind the ancient sovereignty of military might. Public opinion on a world scale cannot penetrate the defense device with which the war system provides each sovereign state. When war threatens, public opinion simply cannot register. And being thus impotent to register, it does not emerge. Which is only to say that with war accepted as the established arbiter of disputes between nations, there is now practically no such thing as public opinion on an international scale.

This is an extreme statement of the case. Exact language would call for qualification. But the qualification is so slight as to be almost negligible. Therefore I do not stop to consider the thin veneer of good manners with which nations overlay their slumbering war relationships. We are interested in the gross fact of the volcano, not in the violet that grows on its slope.

But if the reader takes a more sanguine view of the present potency of public opinion in international relationships, he makes my argument that much easier. For if it is conceded that with the sword lying close at hand, governments are actually inhibited from taking it up because they feel the moral

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pressure of public opinion, what may be expected when the peoples have utterly forsworn resort to the sword? If we have occasional flashes of moral responsibility on the part of governments while war is lawful, how much more responsive may we expect them to be when war is unlawful? There is every reason to believe that nations, with war cast down from its legal status, would interact with one another according to the laws of human nature and of all human society. Public opinion would be released on an international scale. Nations having undertaken a universal commitment to outlaw war and submit their disputes to a court of justice, would find themselves increasingly sensitive and amenable to the decent opinion of mankind.

The idea that nations are potential "bandits," inherently depraved, continually threatening to run amuck and to bring down the house of peace upon the heads of all who would dwell therein, is a false idea, untrue to human nature and to the laws of human society. It is an idea that reflects the war mentality through which we are accustomed to look at the world. It may be a partially true description of nations in the clutch of the war system; but it is true only because and in so far as they are in the clutch of the war system. Let the nations free themselves from the obsessions of war by disestablishing it and setting up in its place an institution of justice and righteous law, and the fountains of public

opinion will send forth their healing and restraining influences upon all peoples.

V. PEACE AND THE WILL OF THE PEOPLES

The full strength of a world organization for peace based upon the outlawry of war, will not appear unless it is recognized that it is to be based upon the expressed will of the peoples themselves. The international treaty outlawing war is not to be negotiated by diplomats, as too many treaties have been negotiated, without the peoples' knowledge or consent, but with the full participation of the peoples themselves. Among outlawry advocates this major premise is so explicit that it frequently takes the form of demanding a referendum or plebiscite in all the more democratic and civilized nations. The outlawry proposal rests upon the belief that the people would overwhelmingly denounce and outlaw war if they were given a chance to cast a simple yes or no vote on the question unconfused by political or other complications. Wherever this procedure is feasible, all will agree that it is desirable. But whether the issue is thus submitted to the technique of a popular vote or not, the people must, as I say in chapter IV, be given the major share in deciding it. This is the democratic idea of international relations. "The sanctions," says Mr. Levinson, "the means of enforcement, are the will of the peoples, crystallized into law, international and domestic. The real question, therefore,

is not, Where are your sanctions? but this: Shall we put our faith in foreign offices and temporary cabinets for security by war, or shall we trust the plighted words of the peoples for the security of peace? When the peoples' answer to this question has been heard round the world the war game will come to an end." Says former Secretary of State Charles Evans Hughes:

> There are those who desire to see an international armed force to compel the carrying out of decisions. Those who make this demand generally assume that there will be substantial unity among those furnishing the armed force so that it can be used. But when there is such international unity the power of public opinion is at its maximum and there is least need for force, while in the absence of such unity the armed force is likely to remain unused. The truth is that the decisions of the court will have the most solemn sanction that it is practicable to obtain. You can really have no better sanction than this and the obligation is one which will be all the more keenly felt when the decision is not simply that of a temporary arbitral tribunal, but of a permanent court supported by practically all the nations of the world.

Sir Austen Chamberlain, in his address before the British parliament explaining England's rejection of the protocol whose main purpose was to provide "security" by strengthening the military sanctions of the league of nations, put the whole matter in a nutshell in 1925 when he said: "Do what we will, we have no choice but, in the last resort, to depend

upon the plighted word." President Coolidge has described the operation of public opinion in words as exact and statesmanlike as they are lofty: "I feel strongly," he said, "that public opinion, based on proper information, working through agencies that the common man can see and understand, may be made the ultimate authority among the nations. . . . Nor is it believable that a world-wide public opinion which frowned upon war would be defied by any nation, however powerful. The interdependence of peoples and nations becomes more marked with every year. None can stand alone. None can court isolation. None may risk the ill opinion of civilization."

Words like these are both true and false. They are false as the world now is. They can be made true only by the utter repudiation of war. "None may risk the ill opinion of civilization,"—but under the war system nations do risk the ill opinion of civilization. They snap their fingers at it. And that very thing called the "ill opinion of civilization," conscious of its impotency under the standards of the universally accepted institution of war, hides itself and withers. Under the reign of the war god, Mr. Coolidge's words are the mere rhetoric of a felicitous address, false, misleading, soporific.

Only when the nations, standing together, pledge one another that they are, each and all, forever done with war, and straightway create an institution of

peace through law and justice, can Mr. Coolidge's noble words become true.

VI. SANCTIONS WITHOUT WAR

Is there, then, in the outlawry system no place at all for the exercise of force, of physical restraint upon those who would upset the foundations of peace and bring war in again? Admitting that force is incidental and not the ultimate ground of a social order, is there not some place for force in the international system analogous to that which it occupies in the community or the commonwealth? The answer is, Yes. But it is not force directed against a nation—that is war, and can be nothing else. It is force exercised *by* a nation *against those within its jurisdiction* who foment war or engage in enterprises in violation of the law of nations. Senator Borah has phrased it in his resolution thus:

> . . . and that every nation should be encouraged by solemn agreement or treaty to bind itself to indict and punish its own war breeders or instigators and war profiteers under powers similar to those conferred upon our congress under article I section 8, of our federal constitution, which clothes the congress with the power to define and punish offenses against the law of nations.

"Thus," as Mr. Levinson points out, "a superstate of force is avoided, and the power to execute the law against war is lodged, where it belongs, with the respective peoples themselves." The outlawry proposal leaves no loophole for the reintroduction of

war. Once cast out it is not to come back under the specious guise of sanctions, or any other guise. Its total and absolute irrelevancy both as arbiter in a dispute and as sanction for keeping the peace is consistently and uncompromisingly maintained in the outlawry system.

Chapter XI

SELF-DEFENSE AND THE OUTLAWRY OF WAR

POSSIBLY the reader who hastily glanced at the Borah resolution and the Levinson draft treaty, in chapters III and IV, stopped for a moment at the clauses referring to self-defense, and found himself wondering whether the outlawry of war proposal did not strike at last upon that barren rock which has brought so many peace plans to their tragic end, namely, the attempt to distinguish between "aggressive" and "defensive" war. But a careful examination of the language will disclose the fact that not the least of the merits of the outlawry proposal is its conscious and absolute refusal to run into that danger. Its avoidance—not by words only, but in profound reality—of the snare of such an impossible distinction is indeed of the very essence and genius of the outlawry program.

Any project for world peace which undertakes to retain the categories of "defensive" and "aggressive" wars, "righteous" and "unrighteous" wars, "permissible" and "non-permissible" wars, is doomed to futility. The proposal to outlaw war utterly rejects all such distinctions and confronts war squarely as an

institution. On this level all subtle distinctions disappear, and all our pretty plans for the "prevention" or the "control" of war stand revealed as not only futile but irrelevant. There is effectiveness in none of them so long as war itself remains legal, established, authoritative and available. Let us keep this point of view explicitly in mind while we consider the references to self-defense in Senator Borah's resolution and Mr. Levinson's proposed treaty.* Let us quote from the resolution first:

> Whereas an international arrangement of such judicial character would not shackle the independence or impair the sovereignty of any nation, and would not involve or affect the right of self-defense against invasion or attack, such right being inherent and ineradicable, but should not be a mere subterfuge for the traditional use of war. . . .

The clause in the draft treaty reads as follows:

> Subtle and fatal distinctions between permissible and non-permissible kinds of war are blotted out; the institution of war is thus outlawed, as the institution of dueling has been outlawed; but the question of genuine self-defense, with nations as with individuals, is not involved in or affected by this treaty.

I hold no brief for the verbal infallibility of the Borah resolution, or of any document in which the idea of outlawing war has yet been expressed, and

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* For the text of the resolution, see page 49 ff; for the text of the draft treaty, see page 61 f.

my first reaction on reading Senator Borah's formulation at this point was that any reference to self-defense was wholly unnecessary. Such a reference, I felt, was both gratuitous and confusing. On the other hand, I saw that if this statement were omitted, the proposal to outlaw war would in all probability be pounced upon by superficial critics as a pacifist measure intended to make self-defense a crime. If you outlaw war, you outlaw self-defense—so the caricature of the proposal would run. Neither Senator Borah nor Mr. Levinson is a pacifist, in the current restricted usage of that term as one who for conscience' sake refuses, under any circumstances, to have any share in the existing war system. Nor is the outlawry movement a pacifist movement. It confronts war on a wholly different level from that on which pacifism confronts it.

The reference to self-defense in the Levinson draft treaty is subject to the additional criticism that, under a strict construction, it hardly belongs in a treaty at all. It involves no obligation. It is purely informative and explanatory. Manifestly, however, Mr. Levinson's intention was identical with that of Senator Borah in framing the resolution. He desired to safeguard the treaty against a pacifist caricature by the opponents of pacifism. Rather than leave any opening for such an interpretation, Mr. Levinson chose to insert these words. They add not a jot or a tittle to his treaty, nor would their absence

subtract a jot or a tittle from his treaty. They are included for purely explanatory purposes to prevent discussion from being side-tracked upon the sterile issue of the abstract right of self-defense. Professor Gilbert Murray's comment reveals an understanding of the significance of this clause when he says: "The purpose here, I take it, is to destroy the last vestige of war's legal and institutional status, and at the same time not to make a criminal of a nation which, if actually and wantonly attacked, defends itself."

If the danger of omitting such clauses from the draft treaty and the resolution consists in the possibility that an ultra-pacifist interpretation may be read into the outlawry proposal, the danger of including such clauses consists in the likelihood that some people will not really read what the words say. The words do not say that self-defense is *approved;* nor do they say it is *condemned.* The words say that self-defense is neither *involved* in nor *affected* by the outlawry of war. Outlawry absolutely has no point of contact with the question of the right of self-defense. If self-defense is right, it is right under outlawry. If it is wrong, it is wrong under outlawry. The outlawry of war both transcends and cuts under the whole question of "defensive" versus "aggressive" war. All distinctions between "kinds" of war are "blotted out."

This is because the outlawry of war deals with the

institution of war, and does not involve or affect the ethics of national self-defense, any more than the outlawing of the duel involved or affected the ethics of individual self-defense. Outlawry approaches the war evil from the point of view of public law—it is the juridical approach. It involves only the ethics that law is capable of administering. It is needless to dwell here upon the fact that law is incapable of administering the whole of morality. After you have made the best laws possible, there will always remain deeper strata of right and wrong which law cannot reach.

Innumerable are the questions of moral conduct which are not "involved" in or "affected" by the laws of our most advanced communities. The question of self-defense is one of these. It is inconceivable that a law could be enforced against self-defense. The law says that I must not commit murder. But to defend myself against a murderous attack is my "inherent and inalienable" right—that is, *juridically* inherent and inalienable. You, a believer in absolute non-resistance to evil, may try to convince me that it is better to be killed than to kill; you may urge this ethical principle upon me in conversation, or put a book in my hand which argues it, or introduce me to Gandhi or Tolstoi or Socrates or Jesus in the hope of persuading me to accept the principle. I may be convinced by your moral tutorship; I may decide that the so-called right of self-defense is

morally no right at all, and yet this will not affect or involve the fact that, juridically—that is from the standpoint of law—self-defense is an inherent and ineradicable right.

The same is true on the level of international law. Let us assume that the nations are living together under a system from which war has been outlawed. Let us further assume that a "bandit" nation breaks its international agreement and wantonly violates the law of nations by suddenly attacking a neighboring state—a preposterous hypothesis, but we need not fear to consider it. Let us also assume that the state attacked has yielded to the arguments of its pacifist citizens and refuses to meet the attack with military weapons. If any state wishes to choose that course, it is its right to do so. But you cannot *legislate* that it must do so. If it were not convinced that it ought to do so, all the legislation in the world would have no inhibitive weight. Law cannot reach that far. The question of the right of national self-defense is purely ethical, and cannot be involved in or affected by any juridical standard or process. It is in that sense an inalienable right—law cannot "alienate" or destroy it.

This, I fear, is so obvious that the reader will be impatient with me for dwelling upon it. But I would rather err on the side of prolixity than to leave unclear this profoundly simple insight which frees the outlawry of war proposal from the whole

brood of doctrinaire issues about self-defense. We have seen that war is an *institution.* Under that category, and in the concrete reality to which that category refers, all doctrinal differences disappear, and all subtle distinctions between "kinds" of war are absorbed. Under the banner of outlawry the single thing that unites us all is the fact that *we are against that institution.* We may differ on everything else. We may differ widely on our reasons for being against that institution. We may be against war because it is economically wasteful, or because it is inhumane, or because it is a violation of the sacredness of personality, or because it interferes with business, or because "I didn't raise my boy to be a soldier," or because it is a sin, or because my church is against it, or because it jeopardizes the centuries' cumulative achievements of learning and art, or because the interests of labor are against it, or because world finance is disrupted by it, or because we recoil from the physical horror of it, or because we think Jesus Christ forbids it, or because we are cowards, or because we are not cowards,—whatever our reasons, good or bad, big reasons or little reasons, statesmanly reasons or puerile reasons, selfish reasons or altruistic reasons, the one unifying and only necessary thing is that we shall be *against* it, that we wish altogether to destroy it.

When we thus turn away from all our doctrinal biases and disunities to a square-away confrontation

of *the whole fact of war as an established institution*, we shall find ourselves united also in our method of attack upon it, *because there is not known to human society any method by which an established institution may be gotten rid of except by outlawing it.*

I have been discussing an incredible hypothesis—that a nation committed to and involved with all the nations of civilized society in a world-wide treaty renouncing forever the use of war, and having approved and helped in the establishment of a code of law whose basic statute makes war a crime, should suddenly turn bandit, or highwayman, and wantonly attack another nation obligated like itself under the same covenant. That, I now say, is an incredible and preposterous eventuality. And I so affirm, not alone because I trust the sacred honor of every nation when once the immoral standards of the war system are repudiated, nor because I am able to imagine certain effective methods *outside the law*, but not against the law, by which the family of nations could restrain such a nation from running amuck, but also, and chiefly, because under the operations of a court such as the outlawry system provides, it would be possible to bring to bear upon a government contemplating this high-handed banditry the powerful pressure of world public opinion *before the impulse to play the bandit ripened into an act of so-called "aggression."* With a real court, administering real law,

possessing affirmative jurisdiction, an offended nation would enter its complaint in the dispute stage of the quarrel, without waiting for the combat stage to be reached. The offending nation would be immediately summoned to the court to make its defense, not upon the ambiguous and obscure charge of being an "aggressor," but upon the charge of violating specific statutes or principles of equity in international law. The court would decide the case. Upon that decision would be focused the clear, white light of international public opinion.

I say again that it is incredible that a nation would or could turn itself into a bandit under those conditions.

And to what I said above concerning the abstract right of self-defense not being involved or affected, I now add that, under the outlawry system, a concrete occasion for testing that "right" would be so remote as to be almost unimaginable.

Chapter XII

THE MYTH OF "AGGRESSIVE WAR"

I HAVE referred on a previous page to the phrase, "outlawry of aggressive war," which has been imitatively adapted in certain quarters from the vivid and powerful title, Outlawry of War, by which the Levinson-Borah proposal first became known. This phrase, "outlawry of aggressive war," has had a deceptive and confusing influence upon public understanding. Wherever it has been used, whether in the protocol discussion of 1924, or in American party platforms of that year, or in resolutions and official literature of certain religious organizations, or on the lips of President Coolidge, it means just one thing, and that is *nothing*. It means nothing for two reasons. One is that in modern civilization there is no such thing as aggressive war. The other is that it could not be outlawed even if there were.

I. THE PASSING OF THE AGGRESSOR

No nation today fights a war of aggression. And this is true not only in the sense that no nation admits that it is the aggressor, but also in the sense that there is no way by which an impartial tribunal can justly determine where the guilt of aggression lies. Every government, finding itself caught in the throes of

war, and compelled to enlist popular support, dissembles the real cause of the conflict, and puts forward certain high-sounding moral aims, including always self-defense. This hypocrisy is inherent in all war. The ostensible cause is seldom or never the real cause. National morale could not be mobilized behind a war if its real causes were frankly and flatly stated. The thing has to be idealized, and pictured so as to appear to involve high ethical principles. This was notoriously true in the world war.

But even so, allowing for the conscious hypocrisy of war offices, it must be conceded that the complex relationships of nations are such that it would puzzle even a war office, knowing all the facts, and facing the question honestly and judicially—if such a thing can be conceived!—to determine whether its side or the other side was the aggressor. Wars do not descend from the clouds upon the peoples. They do not arise in a vacuum. The nation which *declares* war is not necessarily the aggressor. Its very declaration of war may be an act of self-defense. The invader is not necessarily the aggressor. His invasion of the other's territory may be, from the point of view of military strategy, necessary to defend his own territory from invasion.

A government which wants to go to war, or senses the inevitability of war, is often able to *provoke* an act of apparent aggression from its neighbor. It creates a situation in which, without laying itself

liable to the technical charge of aggression, it forces its neighbor to accept that rôle. War does not spring up on one side of the boundary line only. It develops on both sides. The climacteric act by which two nations plunge themselves headlong into battle is no basis at all upon which to determine the aggressor. The chances are that this final act arose out of a situation which made it inevitable. Responsibility in modern warfare is dual. Aggression is reciprocal. Organized as our society is it can hardly be otherwise.

People who think in terms of "aggressive war" are not thinking in terms of modern war. They are romanticists, whose minds have not moved beyond the story-book picture of the ambitious warrior of ancient times who went forth with his mercenary soldiers to plunder and conquer. That romantic warfare has gone forever. War now involves whole populations. Communications the world around are so intimate that the very act of mobilization is an act of war—with no declaration of war, and without taking a step across the boundary. Aggressive war has disappeared, except perhaps in the case of great powers against backward tribes in distant parts of the world, and this is so different from modern war as to belong in another category.

The full force of my contention that there is no such thing in modern times as "aggressive war," is strengthened by the way in which the advocates of the so-called "outlawry of aggressive war" state

their argument. The "aggressor" is said to be a "*self-confessed* aggressor." It requires no great skill in detecting subtle psychological processes to explain just why that word "self-confessed" has been conscripted for the argument. Plainly, it is because the advocates of this fiction know that there is no way by which a case in law or justice can be made against a nation as being guilty of aggressive war—even under the terms of their own definition. History alone can determine the aggressor, if indeed either side was more guilty than the other. And no nation ever has confessed or ever will confess that it is guilty of aggression. Even the worst criminal who is convicted by a jury is not a "self-confessed" criminal unless he makes a voluntary confession of his guilt. But lacking any judicial possibility of proof that a given nation has been guilty of aggression, it becomes necessary to refer to it as a "self-confessed" aggressor. No proof, therefore, is needed. This seductive device may make an appeal to the unthoughtful but if it does not subject the perpetrators of it to the charge of disingenuousness it surely does suggest something as to their perspicacity.

II. "OUTLAWING AGGRESSIVE WAR"

But, as I have said, even if there were such a thing as aggressive war, it is folly to talk of outlawing it. In the first place, no mechanism has ever been conceived by which the aggressor could be identified.

The orthodox peace movement has been much taken since 1924 with the definition of an aggressor as "the nation which refuses to accept arbitration." Like children playing with a new toy, this "new definition of an aggressor" has been the delight of European-minded peace advocates since it was first incorporated in the rejected Geneva protocol. Looked at in the abstract, it seems reasonable enough. Let us provide, say its advocates, that "if war breaks out the league is to order both parties to stop fighting, to retire behind their frontiers and to submit the dispute to peaceful settlement; if one of them disobeys and continues fighting he is the aggressor and the criminal."

It is all but incredible that this proposal can be taken seriously by men who are able to visualize concretely a war situation. This is sheer trifling with the grave issues of peace and war. To imagine that two nations with their fighting blood heated to the temperature of actual combat would heed the "order" of the league and submissively retire behind their lines while the question of their respective guilt of aggression was being determined, is, it seems to me, boyish thinking. It sounds not unlike Mr. Henry Ford's peace ship romanticism.

This scheme is vitiated by the fallacy which I increasingly think permeates most peace plans—the tacit assumption that the conflict which is to be stopped or prevented is a conflict between *two small*

nations, in the back yard of the great powers, all of whom are in an amiable state of mind toward one another and unimplicated in the quarrel. If the problem of peace were that kind of problem—as for example the recent clash between Bulgaria and Greece, which the league council settled with a "Tut, tut!"—it would be easy to abolish war. European thinking on peace, including its American following, strangely enough, proceeds under this unrealistic visualization of concrete crises. Who can imagine England and Germany, for example, once actually at war, heeding the "command" of the league to retire behind their frontiers? Or any other great powers? War simply is not that kind of thing! Moreover, as we saw in the previous chapter, the day of two-power warfare is past. The moment two powers are involved in war, other powers tend, with hellish gravitation, to be drawn into it. A wedge is thus driven into your political world-organization; the powers are arrayed against themselves; and their authority, and that of their world-organization, to issue "orders" in the name of peace is, obviously, divided and nullified.

But waiving this, what mechanism is to be used to identify the "aggressor," and because of what acts is he to be declared guilty? The mechanism is, of course, arbitration. And arbitration, whether at the older Hague court, the league court, or under a specially chosen tribunal, is always susceptible of

political shuffling and manipulation. Therefore, a nation, before agreeing to submit to the authority of the league or to the arbitrament of any council or tribunal, will consider not only the merits of its case but *the interests of the other powers in the outcome.* This was precisely what Italy did in the Corfu case. She had a strangle hold on Corfu. But she also at that moment had a strangle hold on the powers. She withdrew from Corfu. And the council of ambassadors, with the blessing of the league, yielded to every one of her insolent demands. The settlement was not judicial; it was political. Does anyone imagine that Italy, had she not known in advance that she could control the "pacific settlement" would have withdrawn from Corfu?

Arbitration, operating within the war system, which now dominates the world, is not and cannot be a genuine judicial process. It is inevitably susceptible to political influence—to the national bias of the judges, the manipulations of the parties, and the machinations of other powers. A nation may accept arbitration in a given case for one of four reasons: (1) because its case is strong, (2) because its case is weak, (3) because the stake in the case is not worth fighting over, (4) because it believes it can control the decision. But it is unthinkable that a nation, *worked up to the point of actually going to war,* and believing that it could win a military victory, would submit its case to arbitration for any one of the first

three reasons, *unless it knew it could control the decision.* It would be the simplest thing in the world if the dominant powers desired one and not the other of two combatants to be declared the aggressor to control the arbitral process so as to produce that result.*

But aside from all this, let us assume that the arbitral process is under way, that the tribunal is actually hearing the evidence to determine the aggressor. By what acts is a combatant to be declared guilty of aggression? We have already seen the injustice of basing the verdict upon the climacteric act of formally declaring war, or even of actually invading the enemy's territory. Such an act, I repeat, may, under the war system, be a genuine act of self-defense—an inevitable reaction to a provocative

* We are able now to see how inept is the propaganda being pushed in the United States with the purpose of committing our government to a sort of "selective neutrality," when a war is on, by inhibiting shipments of munitions to and all commercial intercourse with the nation that has been declared the "aggressor." It is folly to expect the United States to adopt any such policy. There is no test of an "aggressor." This country is not going to subject its neutrality to the uncertainties of diplomatic juggling by which one nation and not another may be stigmatized as the aggressor. America will come nearer being persuaded to interpret her neutrality in terms which involve the withholding of aid from *both* belligerents, than from the one which happens to have been fixed upon by the great powers, operating under no objective standards of justice whatever, as more guilty than the other.

strategem designed to make the invader appear in the rôle of aggressor. It is no sound basis for a just decision. But the moment the tribunal abandons that merely technical test and extends its inquiry into the actual facts of the situation as it developed on both sides, the tribunal will be lost in obscurities and falsehoods and ambiguities and recriminations from which no just and timely judgment can emerge.

Let the reader imagine himself sitting on an arbitration tribunal to determine the aggressor in the late war! But on second thought he need not exercise his imagination at all. For seven years he has been hearing the evidence presented in scores of volumes by the world's most authoritative historians. If the reader's state of mind is like my own the net effect of this mass of evidence has been wholly to destroy the myth of a single guilty nation and to locate the guilt in the war system itself in whose provocative nurture and extension all the nations shared each in its own degree.

But we are not yet through with this piece of tinsel called the "outlawry of aggressive war." I said at the outset that there was no such thing as aggressive war, and even though there were it could not be outlawed. Unlike the outlawry of the institution of war, which is accomplished without military sanctions, and only without such sanctions, the so-called "outlawry of aggressive war" can be accomplished only by means of military sanctions. In the league cove-

nant, in the famous Geneva protocol, and in the Locarno treaties, the category of aggression is always associated with the provision for military enforcement. That is reasonable and inevitable. As long as the war system remains undisturbed, unchallenged, any promise which a nation may make not to engage in a particular "kind" of war—aggressive, or non-permissible, or unrighteous, or any other "kind"—is worth just as much as the paper it is written on. In order to invest such promises with even the illusion of reality and validity, it is necessary that they be backed up with military sanctions. But the execution of military sanctions is aggressive war itself, in its most flagrant and indisputable form! Such an aggressive war against an alleged or a convicted "aggressor" would be waged by the league, the presumptive guardian of peace, and under the authority of law! Yet the procedure is called the "outlawry of aggressive war"! It is difficult to restrain one's expression within the limits of decorum in discussing a concept like this, put forward as a serious contribution to the great cause of peace, and ending with the employment of what is held to be the worst form of war, namely, aggressive war itself!

Mars never did a better day's work for himself than on that day on which he got earnest peace people to busy themselves with the illusion of "outlawing aggressive war."

Chapter XIII

A NOTE ON DISARMAMENT

FROM the point of view elaborated in this book the agitation for reduction of armaments is merely one of the several phases of the indirect and palliative methods of establishing peace. No one who thinks or feels in terms of world problems can look with anything but favor upon the proposals for limitation of armaments. Especially where the building of armaments has become competitive, and its effect is to aggravate conditions and accelerate the coming of war, is the emphasis upon its limitation most needed. Likewise, from the economic point of view, particularly now that the countries are striving toward economic convalescence, this question has the deepest significance and should receive the widest consideration. Anything that can be done to lift the enormous burdens under which the nations have groaned for years before the war and are still groaning, should be done. That eighty per cent of the revenue of a nation as pacific minded as the United States should be spent on the war system is monstrous. That the impoverished and debt-ridden European nations should be led into such colossal economic waste is a ghastly illumination of the

slavery in which mankind is held by the spell of the war system. And that the total cost of maintaining the war system in these times of comparative peace is about $3,000,000,000 a year, affords one of the capital economic problems confronting our statesmanship.

That the easing of this burden also has a bearing on the peace problem is freely granted, for without doubt military superiority tends to release impulses of greed or tyranny or provocation which would be held in check were a nation not confident of its ability to back up its impulses with force. The very possession of military and naval power is an incessant suggestion that some use must be found to which it may be put. Any proposal to curtail the military establishments of the nations therefore deserves the approval and support of all lovers of peace.

But the limitation of armaments is not a genuine peace policy. So to conceive it is to fall into a snare. It is not basic; it does not touch the marrow of our problem. It is essentially an economic policy, designed to relieve the burden which the war system puts upon the shoulders of the masses of mankind. It is a *tax* measure not a *pax* measure. From the point of view of peace, disarmament is a palliative but not a remedy for the evil of war.

So long as the institution of war continues under protection of international law as the legitimate arbiter of international disputes, disarmament, even

though it cut the armies and navies of the world down to a so-called "police basis," will be both ineffective and illusory. The history of mankind shows no fewer wars when armament was scant and simple than since it has become heavy and complex. If the war system maintains its age-old status it can function and will function with whatever weapons lie at hand. When the dispute becomes acute new arms and mighty armaments on a huge scale will come into existence as by magic under the legalized regime of war. When war comes nothing counts but armaments, men and victory. Unless the right of appeal to war be renounced by the nations, it will make only the slightest difference whether at a given time the nations involved in a dispute are lightly or heavily armed. The war system operates under any conditions and with any weapons in accordance with its genius.

But the deeper consideration is that with the war system undisturbed in international relations, the disarmament goal is a sheer delusion. We can limit the building of battleships, and reduce the number of soldiers in the standing armies, and restrict the production of the more bulky and expensive instruments and mechanisms of war, but this is not disarmament. All the world knows that wars of the future are to be waged with a technique infinitely more refined and scientific than any past war has used. The efforts of the Washington conference

seem naïve and unsophisticated in the light of the developments that have gone on in Germany despite the vigilant inspectorship of the allies, in Japan despite the three power pact, in the air service of France and England, and in the chemical and physical laboratories of the United States. As the last war was fought underground, in dugouts and trenches, so the preparations for the next war are going on in subterranean places, in chemical laboratories and in factories, under the guise of science and normal industry. Disarmament as related to the more expensive mechanisms of warfare, such as battleships and heavy arms, may be practicable up to a certain point, and this may relieve the economic burden, but to imagine that such economic relief is relief from the likelihood of war is blindness and folly.

There is not a shred of a reason to hope that the disarmament program has any but a temporizing relation to ultimate peace. Disarmament proposals are primarily the expression of an economic condition, and are now palatable to the governments chiefly because of the momentary satiety of war. But this economic and mental condition will change. The nations will recreate their lost wealth. The disgust of war born of the near view will pass, and with increasing distance its meretricious glory will return. Meantime the entrenched war system, undisturbed by the most drastic program of disarma-

ment, will be operating according to its nature *pari passu* with the economic revival, making subtle and obscure but very substantial preparations for another war. With the war regime still legal, and with the possibility of war in the background, genuine disarmament is impossible. It is Pollyanna statesmanship to think otherwise.

The distinguished English authority on international law, L. Oppenheim, in his latest work, "The Future of International Law" (1921), says: "Disarmament will not cause the ceasing of wars, but the ceasing of wars will bring about disarmament." Here, as at so many points, the abolishment of dueling throws light upon our procedure in the case of war. When we determined to get rid of dueling we did not pass laws restricting the manufacture and sale of pistols and swords, nor did we undertake to remove a single cause of dueling. We simply outlawed the institution itself. So must it be with war, which is merely dueling on an international scale.

There is only one path to disarmament, and that is the path of first outlawing the institution of war. Armament is not the cause of war; it is the creation of war. Retain war as the lawful and authoritative instrument of settling international disputes, and every nation, even though a party to an agreement curtailing its visible and measurable armaments, will take other steps toward making itself as strong and ready as possible to meet attack or to

enforce its will. "If it is lawful to do a thing we must expect it to be done in this none too virtuous world." Unless the nations are prepared to make war unlawful and criminal and to set up in its place a genuine world court of law, it is little short of a waste of time, it certainly is a delusion, to pursue such a path of circuity and indirection. Abolish war, and the armament problem will solve itself by natural processes. With war outlawed, and the nations' confidence in one another's good faith growing more and more sure, the militarists and imperialists will find it increasingly impossible to secure appropriations from the tax burdened people for purposes of breaking the law which they have themselves made and to obey which they have pledged their national honor.

In a word, the outlawry of war cannot be attained through disarmament, but disarmament will be the inevitable result of the outlawry of war.

Chapter XIV

AMERICA AND THE LEAGUE OF NATIONS

OUTSIDE of certain professional headquarters of propaganda still dominated by the waning league tradition, the intelligent masses of the American people have reached a fairly well settled conviction that the league of nations and its court *as now constituted* should have no claim, in the name of peace, upon the conscience of this country. While the country is becoming comfortably reconciled to participation in many marginal activities of the league, it may be fairly well assumed, henceforth, that America has definitely decided to have no part in the structural commitments by which the league is bound. There have been five episodes in recent international history which have tended to confirm American public opinion in this respect. They are (1) the debate in the United States senate on the world court, (2) the Locarno treaties, (3) the scramble for seats on the council of the league at the time set for Germany's admission, (4) the preliminary disarmament conference, and (5) the controversy over the debts. We shall be able in the limits of these pages to give only a passing word to each.

I. THE DEBATE ON THE WORLD COURT

The debate in the United States senate on America's adherence to the protocol of the permanent court of international justice turned chiefly upon three points: First, that it was not a real court, but essentially an arbitration tribunal; secondly, that, despite our reservations, our adherence inevitably would involve this nation in unsatisfactory and even embarrassing relations with the league; and thirdly, that the court was vitally linked with the war system through its subordination to the league, and hence could not function as a genuine agency of world peace. With the first two points we are not concerned at this time. The debate on the third point was highly illuminative as to the nature of the league and the court. American opinion has been profoundly impressed by the admissions and revelations that were there made. There was before the senate a simple reservation designed to separate the court from all compulsion based upon military force. The proposed reservation was as follows:

> The adherence of the United States to the statute of the world court is conditioned upon the understanding and agreement that the judgments, decrees and advisory opinions of the court shall not be enforced by war under any name or in any form whatever.

The proposal could not have been more clearly and simply worded. It was an acid test applied to the league system. The debate on this proposed

reservation occupied the entire last day of the senate's consideration of the world court. At the end of the day the vote favorable to adherence was taken. But before the roll-call, admissions were made by the proponents of the court which astounded the hitherto acquiescent but uninformed portion of American public opinion. It was at first charged by the friends of the court that this reservation was introduced only as a bit of obstructive tactics. When it became apparent that this was not so, but that there was in the senate a group of minds holding seasoned convictions on the subject of the employment of military sanctions to execute the decisions of any international court, the reply of the proponents of America's adherence was that the adoption of this reservation would be equivalent to a rejection of the court. For, it was contended, the other signatories could not accept such a reservation; they could not accept it for the reason that they were pledged by the covenant of the league to a contrary principle, and the United States could not ask them to violate their covenant! The league side of the controversy was expressed by Senator Lenroot, republican floor leader who, with Senator Walsh for the democrats, was in charge of the pro-court cause. The following colloquy occurred between Senator Lenroot and Senator Borah:

Mr. Borah: We are not seeking as has been said here, to control the league of nations with reference to other

things which are covered by the covenant proper; but we are adhering to a statute, which statute creates a court, and we are asking these nations to agree that as to the judgment of the court to which we are adhering they will not resort to war for the purpose of executing it.

Mr. Lenroot: Does the senator think that the states now adhering to the court could accept this reservation without an amendment to the covenant of the league?

Mr. Borah: I do.

Mr. Lenroot: But would they not be violating the covenant of the league to which they have agreed?

Mr. Borah: No, I do not think so, Mr. President. They would be amending it in a sense which they have already done. If the members of the court which are also members of the league, or the members of the league, which are also members of the court, agree to accept this provision, it will be binding upon them so far as the judgments of the court are concerned. . . .

Mr. Lenroot: The Geneva protocol involved amendments of the covenant of the league, did it not? And this does. They would have to violate a promise they have made if they accepted this reservation. . . .

Mr. Borah: Suppose, then, the United States should be instrumental in securing an amendment to the league of nations covenant to the effect that it could not employ force for the purpose of executing a judgment of the court against a sovereign state. Does not the senator from Wisconsin think that would be a magnificent achievement?

Mr. Lenroot: Does the senator from Idaho think that they would make that amendment?

Mr. Borah: They would do it, Mr. President, unless they regard the covenant of the league of nations as a military alliance. If they regard the covenant of the league of nations as an instrument of peace, and the league itself

as an instrument of peace, I have no doubt they would accept it; but if they regard it as a military alliance, founded upon force, capable of executing its judgments only by force, of course, they would not accept it, and that would be the best reason in the world why we should stay out.

Mr. Lenroot: Mr. President, if the senator will yield further, everybody concedes that force is in the background of the covenant of the league of nations, and it is through potential force that they hope to maintain peace.

Mr. Borah: It is in the background, and always, when it is in the background, it is but a short space of time before it gets in the foreground. The senator can recall many organizations in behalf of peace and in the interests of peace, which provided for conciliation and arbitration, and so forth, but within them somewhere was found a provision for the use of force. How long did it take those organizations to become sheer military alliances?

It was too late in the debate for the full significance of these revelations to bear decisively upon the vote in the senate. A sufficient number of senators were already committed to America's adherence, and within two hours after the above discussion took place the vote of adherence was taken. But the country's conscience, called thus vividly to consider the acknowledged military character of the league system, allowed that system to slip more and more out of the focus of its serious consideration.

II. LOCARNO

The amazing thing about the Locarno treaties is that they contain not a single essential principle or

commitment *which was not already incorporated in the covenant of the league of nations.* Locarno was acclaimed as an achievement of enormous importance to the peace of Europe. Beyond question it justifies such acclaim. It solves the primary question—so far as a treaty backed by overwhelming force can solve it—of European security against a recurrence of another war between France and Germany. But the fact that it required a Locarno to accomplish this has thrown a flood of light upon the covenant of the league! Let us consider specifically what was done at Locarno, and then consider what had previously been done at Versailles by the agreements of the covenant.

The initial step toward the Locarno treaties was taken by Chancellor Luther of Germany in a memorandum sent to the great powers on February 9, 1925. In substance the German government offered to relinquish forever any claim upon Alsace and Lorraine and to guarantee Germany's western boundary as drawn by the treaty of Versailles. Of her eastern boundary the memorandum declared that while Germany would use all peaceable means available to have it redrawn, she would enter into an agreement with her neighbors, Czechoslovakia and Poland, never to go to war about it. When this offer became known it was felt throughout the world that a new day had dawned. Germany was not then a member of the league.

Naturally, under the conception of the league of nations then current in American peace circles, the appropriate answer of the allied powers to the German memorandum should have been: "Good! On these representations we welcome you into the league of nations! For the 'heart of the covenant' of the league, namely, article x, is none other than the very principle contained in your memorandum." Article x reads as follows:

> The members of the league undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all members of the league. In case of any such aggression or in case of any threat or danger of such aggression, the council shall advise upon the means by which this obligation shall be fulfilled.

Every one of the allied powers had signed this covenant, and other nations of the world to a grand total of fifty-five had signed it, guaranteeing each other's boundaries as against aggression. Germany's entire proposal would have been fully covered by article x to whose provisions she would have become obligated immediately upon becoming a member of the league, as in theory the other states were already obligated.

But the powers made no such reply to Germany. Instead, they proceeded to act as if there were no such thing as a league of nations with a covenant mutually guaranteeing the integrity of one another's boundaries. They accepted Germany's memorandum as the

basis of a special treaty, or series of treaties, which at last were consummated at Locarno. In these treaties France and Belgium on one side and Germany on the other promise to accept and maintain the present boundary line between them, and Great Britain and Italy guarantee each party to the treaty against its violation by the other party. Locarno, that is to say, binds England and Italy under certain conditions to fight either Germany or France if a war breaks out between them.

But with Germany in the league the covenant would absolutely have covered this provision. Why, then, was a special treaty, duplicating article x, adopted for this identical purpose at Locarno? There can be but one answer: *The powers did not intend to be bound by their league covenant.* If they could not trust themselves to keep their solemn commitments under article x, how could they expect that Germany, by becoming a member of the league, would be seriously bound by these same commitments? Hence they improvised Locarno.

This confession of impotency with which the league members regard their own covenant obligations, has had its effect upon America's opinion of the league. Superficially, it raised the question of the sincerity of the nations in signing their league covenant. But the question of sincerity is always a barren one, and it soon passed over into the question as to whether the obligations under articles x and xvi

of the covenant are not inherently impracticable and impossible. This, after all, is the important matter. For when England rejected the Geneva protocol and turned, in the words of Austen Chamberlain, toward "special arrangements to meet special difficulties," it was an acknowledgment that a universal arrangement such as the covenant provided, by which each nation was made a military guarantor of the boundaries of every other nation, near and remote, whether it had any stake in their preservation or not, simply could not be depended upon. In a crisis the nations would take sides not according to their promise and covenant, but according to their interest at the moment and under the particular circumstances. That is to say, the whole theory of force as applied by a general league of nations against an individual nation in the interest of world peace, had broken down. It was acknowledged to be fallacious and futile by the refusal of the European powers to accept their league obligations, with Germany in the league, as sufficient for a possible crisis between France and Germany.

This interpretation of Locarno as throwing a flood of light upon the league is further confirmed by a consideration of what England *refused* to do with respect to Germany's eastern boundary. Here the Locarno treaties provided that Germany renounce all intention of changing by force of arms the existing boundaries between herself on one side and Poland

and Czechoslovakia on the other. Neither England nor Italy would consent to be a party to the treaties applying to Germany's eastern boundaries. Why was England willing to guarantee Germany's western border and not her eastern border? Clearly because she has a direct stake in the maintenance of the western boundary and none in the maintenance of the eastern boundary. Yet both England and Italy have promised in article x of the league covenant to do no less than guarantee *all* boundaries. Why, if the league commitment was held seriously, should England refuse to accept the same obligation in the treaty which she had previously accepted in the covenant? There is no answer, except that British and all of Europe's realistic statesmen, know full well that the league method of keeping the peace by calling upon disinterested nations to employ their military forces against a recusant nation is sheer fiction.

The war system, according to its very genius, operates only in the line of national self-interest. You simply cannot set the war system into operation for any disinterested international service. In a crisis, if the interest of the powerful nations is on the side of bringing an "offending" nation to terms, it is probable that they would respond to the call of the league. But if their interests in any crisis are not involved, they cannot be depended upon to respond. And if a crisis arises in which their interests are not identical, but divided, the powers themselves

will divide, the league will be destroyed and a general war ensue. From the more detached point of view of America, the significance of Locarno is its illumination of the impotence of the theory of military force within the league. Locarno is based on force, overwhelming military force. But it is force expressive of an already existing, direct and vital self-interest. The force in the league system is, in theory, disinterested force, expressive of an altruistic determination to uphold the covenant by restraining or punishing its violator. But Europe's statesmen are too sophisticated to imagine that in a crisis in which the nations would have only such altruistic motives for action the war system within the league could be employed in the beneficent rôle of peace-maker!

III. THE SCRAMBLE FOR SEATS ON THE COUNCIL

Another event which made a deep dent in America's thinking was, as indicated above, the scramble for seats on the council of the league of nations in connection with Germany's admittance to the league. American opinion had uncritically taken the council for granted as a more or less predetermined body, consisting of the great powers represented at the beginning, together with "vacant" places awaiting Germany, the United States and, perhaps, eventually, Russia. But the real significance of membership on the council had not dawned upon American thinking until it was disclosed in March,

1926, at the special meeting called to admit Germany to the league and thus carry into effect the Locarno treaties. We need not here rehearse the scandalous and ludicrous chapter. The only feature of the event which interested America was the bare fact that so many nations, and just such nations, desired so eagerly to have permanent seats on the council.

The league was about to admit to membership for the first time a potential enemy of certain powers dominant in the league. Germany's relation with France on the west was fully protected by the guarantee given by England in the Locarno pact. But there was no such guarantee of the eastern boundary. The possible machinations of Germany, once she became a member of the league, must be offset, so France and her allies of the little entente reasoned, by the admittance to a permanent seat on the council of at least one of her eastern allies. Naturally Poland desired and was desired for one of these seats. The unseemly imbroglio which ensued, involving Brazil, Spain, China, Czechoslovakia, revealed how slight is the departure of the league system from traditional diplomacy. This scramble for seats on the council disclosed nothing less than the continuation of the old balance of power system *within the league itself*. France foresaw a possible combination of England with Germany and determined to offset it by surrounding herself on the council with alliance-bound friends.

Here was another stroke of disillusionment for

that unsophisticated American peace sentiment which had taken the league at its face pretensions as an "all-in" co-operative system intended as a substitute for the old balance of power principle. It now appeared that within the league system, with its foundations resting upon military force, there was no reason at all why a balance of power might not be developed as easily as though no league existed at all. It is only just to add that this revelation of the oligarchical character of the council came with hardly less shock to many Europeans than to Americans. It released a sentiment in the league countries for a reorganization of the league on a democratic basis. But for Americans the light thrown upon the league by the ambitious clamor for council seats not only illuminated the council but pierced to the background of the league and fell full on the grim visage of Mars.

IV. THE DISARMAMENT FIASCO

America's attitude toward the league as a bona fide agency for abolishing war has been further influenced by the total failure of the preliminary disarmament conference of 1926, which has been continued into the year 1927. The league covenant predicates disarmament as one of its most obvious and immediate purposes. When, therefore, it projected the conference of May, 1926, and invited the United States to participate, both the President and senate responded heartily and promptly with an acceptance.

So plainly desirable an object as the lifting of any portion of the vast burden of armies and armaments from the backs of the people could surely occasion no controversy. It was in line with the Washington conference of 1921, whose results, however they may be judged in the light of later developments, are still regarded with some degree of pride by American opinion. But the clutch of the war system on the league itself could hardly have been more vividly illustrated than by the revelations of this conference. It became clear that the terms "arms" and "armaments" no longer refer merely to cannon and munitions and standing armies and battleships, but to the entire resources of a nation—industry (including especially coal, steel, oil and chemicals), transportation, means of communication, scientific experimentation, wealth, population and everything else. By the new connotation of the terms, it could be shown that the United States was the most fully armed nation in the world! No progress was made or is likely to be made in disarmament under conditions which would require the restriction of the normal processes of industrial activity. Since the war system has thus pushed itself further and further into the everyday, peace-time activities of the peoples, a conference on disarmament is meaningless and futile, as a peace measure, however desirable it may be for economic relief.*

* See chapter XIII for discussion of disarmament.

V. THE INTER-ALLIED DEBTS

The final touch of disillusionment came with the controversy over the allied debts to the United States. I do not remember to have seen any interpretation of this controversy which linked it with America's attitude to the league of nations. But beyond doubt this is one of its most significant aspects. For it symbolized in a vivid fashion to the common-sense mind of the average American citizen the possibilities which might be anticipated if the United States were to tie itself in with the European system by undertaking the intimate political and military commitments of the league covenant. Nothing has occurred to confirm American opinion in its refusal to join the league like the attitude of certain nations in Europe toward their debts.

It is not my purpose to consider the merits of the debts.* We are interested here only in the psycho-

* I do not believe that America's attitude has deserved in any sense the Shylock outburst in the European press. Leaving Britain's debt out of account, enormous sums were written off from the debts of Italy, Belgium and France. And I have not the slightest doubt that American opinion would gladly consider the cancellation of the entire obligation if some substantial gain could thereby be made toward eliminating the war system. America's deepest emotion over the war inheres in the conviction that the war *she* fought was *lost!* She fought to help Europe extricate herself from the clutch of war. This was her basic motive in loaning these vast sums to the allies. If the debts could now be used in some fashion to win *that* war, America would, in my judgment, count total cancellation a good bargain.

logical effect of the controversy. It has been an open window through which American eyes have looked realistically into the possible treatment America might receive if she were caught in any permanent politico-military involvement with Europe. National caution has been aroused. The imagination of the otherwise uncritical average citizen has reasoned on the basis of this debt experience that if his country were put under blanket obligations, such as those which constitute the league covenant, she could easily enough be manœuvered into many another position where it would be necessary to endure injustice and slander. As a result, his mind has been closed to argument and confirmed in a policy of caution which is not altogether distinguishable from fear. In addition to its effect upon America's attitude toward the league of nations, I regard the cynical state of mind produced by the debt controversy, resulting in some cases in virtual cancellation, as one of the most sinister results of the whole war experience.

VI. THE LEAGUE AND WAR

There are three questions which American students of international affairs must keep separate if they would avoid utter confusion and futility in the discussion of the league of nations. They may be stated roughly as follows:

First, Is the league of nations a good thing? To that question I, at least, have no hesitation in answer-

ing, Yes. It is a human thing, therefore not a perfect thing; it has defects, serious defects, as anything humanly contrived under the circumstances which surrounded the league at its founding would be bound to have; but on the whole, and in its concrete circumstances, it is good, and all men of sound feeling must be grateful that it exists. Moreover it can be made better, and especially can it be invested with its maximum of potency when war is outlawed.

Secondly, Will the league abolish war? The answer, as already indicated, is a decisive, No. The league was not conceived for that purpose. And this answer is wholly consistent with the reply to the first question, for there are obviously many good things a league of nations may do, even if it is incapable of abolishing war.

Thirdly, Should the United States enter the league? To this my reply must be both, No and Yes. No, so long as the adherence of the United States involves the acceptance by this nation of the war articles of the covenant, and such involvement in the political affairs of Europe as will be unavoidable through membership on the council of the league. Yes, when the league itself plucks out its war articles, tenders or joins in a general treaty outlawing war and setting up a real court in its stead, and democratizes its organization by eliminating the oligarchical power now vested in the council.

I cherish the hope that by the realization of the

thesis of this book, and by such reconstruction of the league as I have just indicated and which, I am glad to say, is now actually being agitated within the league itself, the day will come when the United States will take an organic and whole-hearted share in the continuing conference of the nations centering at Geneva.

I have, I must confess, found it a difficult task to interpret the events which I have traced in these chapters, and to consider the pretensions of the league as a solvent of the question of war and peace, without conveying the impression of hostility to the league as such. In so far as that impression has been made it is due either to the undiscriminating sensitiveness of the pro-league reader, or to some infelicity in my manner of writing. Such an impression must be corrected. If the reader will turn back and examine the pages on which the league is criticized, he will see that throughout this book we have been considering the league and its system in a single aspect only—*as a technique for abolishing war*. To no other aspect of the league have we directed our attention.

But the league of nations has other aspects whose virtue and merit have not been involved in the critique in which we are engaged. Dr. William E. Rappard, rector of the University of Geneva, formerly head of the mandates commission of the league, states the case with great clarity when he says that the

league of nations is really three leagues: First, the league to enforce the treaty of Versailles; secondly, the league to do a large number of good things; and thirdly, the league to outlaw war. Leagues one and two are being measurably successful, he says, but league number three has yet to prove its strength and adequacy. With Dr. Rappard's analysis of the league and his assessment of leagues one and two, I am in accord. But the position taken in this book differs from his in respect of league number three, for it is my contention not only that the league has not fulfilled, but, *as now constituted*, that it cannot fulfill, the hopes of those who look to it as a competent instrument for abolishing war.

In view of the unchallenged legality of the institution of war in the international law of the world, it was impossible for the nations to create a league competent to abolish war. The league is built upon the legality of war in international law. The league is not to be blamed for its impotence in relation to war. International law is to be blamed. And behind international law stands the will of the nations with power either to perpetuate the law as it now is or to change it by plucking war out of it. No league can abolish war until war is cut out of the tissue of international law. And this is a task for the nations as nations, whether in the league or outside of it.

Again I say the league is not to be blamed. When we recall the circumstances surrounding its creation,

with the din of recent battle still resounding, with bayonets flashing, and the mood of the peoples still obsessed with hate and blood, who could expect an *ex parte* conference of *victors* to so much as conceive a proposal involving the abandonment of the very instrument by which they had become victors? What more natural than that having fought a war to end war they should now proceed on the same level by theoretically massing their military forces to keep the future peace of the world? To say this is not to discredit the impulses out of which the league sprang. These impulses could find no expression save under the limitations and forms of traditional diplomacy whose roots are deeply embedded in the war system.

It is my earnest conviction that instead of abolishing the league of nations, or discrediting it, the outlawry of war would effect such a fundamental and central change in international law that the league could enter into its own true life, with its function vastly enlarged and facilitated, as a real league for peace.

Chapter XV

AN AMERICAN POLICY FOR WORLD PEACE

Not in an obscure corner, not in a futile Europe, not in an antiquated appanage where no onward step can be taken without rebellion, is this seed of benevolence laid in the furrow, with tears of hope; but in this broad America of God and man, where the forest is only now falling, or yet to fall, and the green earth opened to the inundation of emigrant man from all quarters of oppression and guilt; here, where not a family, not a few men, but mankind, shall say what shall be; here, we ask, Shall it be War, or shall it be Peace?

—*Ralph Waldo Emerson.*

IN THE chapter on "Initiating the Outlawry of War" I emphasized the peculiar responsibility of the United States to take the first step in launching this movement by announcing her willingness to be done with war if the other nations would join her in outlawing it by international agreement. This emphasis upon America's rôle as the prime mover is partly based upon objective considerations and partly, I confess, upon patriotic pride. I happen to be an American. No doubt if I were a Frenchman I should make my appeal to France; or if I were an Englishman I should make my appeal to England; or if a German to Germany; or if a Japanese to

Japan. One could hardly aspire to a more lofty goal for one's country than to hope that she might lead the way in this incomparable enterprise of banishing war from the earth. But I certainly do not wish to leave the impression that there is only one nation that can effectively take this great initiative. I repeat that any nation, great or small, which would break the vicious circle of the war system by adopting a resolution similar to the Borah resolution, would start a movement whose spread would. in my judgment, be swift and irresistible.

I. OUTLAWRY OF WAR THROUGH THE LEAGUE

There are, of course, other ways of initiating the outlawry of war. One in particular must have been urging itself upon the ardent pro-league reader as from chapter to chapter the outlawry procedure has been growing more and more clear. Such a reader, as he lays down this book, will naturally be asking, Why should not the league of nations take the initiative and offer such a proposal to the United States and all other nations not now in the league?

To which I reply, Why not? Such an offer would effectually lift the league of nations high above the suspicion and doubt with which it is now regarded and stop the mouth of all criticism, including the critique contained in this book. If the league should pass a bona fide resolution initiating the outlawry of war, it would sound the doom of war. Immediately

there would begin the definitive separation of the "sheep from the goats"—those nations which are ready to abandon war from those nations which would still cling to it. With the yes or no issue thus unambiguously defined on the simple question of the abandonment or the perpetuation of the institution of war, the whole problem of world peace would take on new outlines. A world-wide agitation would begin. The sources of public opinion in all countries would be quickened into action and the will of the peoples themselves would have a chance to deal in the open with their diplomats and governments on this question which concerns them more vitally than any other in the entire range of their contact with the state

Any real lover of peace must vibrate with emotion at the prospect which would be opened up should the league earnestly face the problem of abolishing war. Why, then, the reader may ask, has not this book been devoted to the task of bringing the problem home to the league? The answer is obvious, of course, in the light of all that has gone before. I have not done so for the reason that I do not believe the league, as now organized, contemplates the possibility of the abolition of war. Besides, any member of the council of the league has the power to prevent the outlawry movement from getting even a start within the league. According to the covenant the league could not act in this fundamental matter with-

out the unanimous consent of all the members of the council, a body in which is theoretically concentrated the most gigantic military power the world has ever known.

The league's protestations of pacific aims are cut from the same cloth as have been similar protestations by every military alliance in history, including the pompously pious Holy Alliance. From the same cloth was cut the ancient pax Romana, and recently that insolent proposal by an American publisher for a sort of pax Anglicana—a combination of English-speaking peoples to keep the lesser breeds in order.

The war system is as essential a part of the league of nations as of any of these other military schemes for keeping the peace of the world. It, no less than they, rests upon force, vast combinations of force, the only difference being that the force theoretically available for league purposes is (theoretically) far more formidable than any other military alliance previously contemplated. *On the day that the league of nations moves for the outlawry of war it will become a new league, with a new ideal, a new covenant and a new place in the hearts of the peoples.*

My reason, therefore, for not pointing the outlawry proposal directly toward the league and laying it upon the league's conscience to take the initial step in officially offering it to the world, is not that I would be indifferent to the possibility of such a base of operations for a frontal attack on war, for I can

imagine no more ideal and promising conditions within which the outlawry proposal could officially originate than those provided by the meeting of the nations at Geneva. If the analysis and interpretation of the league as an organization fully committed to the perpetuation of the war system, as set forth in this book, should be proved mistaken and false by the league's adoption of the outlawry proposal, none would more greatly rejoice than this author. But it seems more reasonable to hope that the spell of war will first be broken by a single nation voluntarily making a declaration of its readiness to abandon war as an institution for the settlement of international disputes, and gathering under the banner of outlawry one nation after another.

II. AMERICA'S PECULIAR RESPONSIBILITY

Being an American, I naturally desire for my country the honor of initiating such a new epoch in world history. And perhaps this patriotic motive presses the harder in view of America's rejection of the world organization which issued from the war. The undeserved stigma that has been fastened upon the United States by European opinion and by pro-league citizens of our own country, seems to make it peculiarly the duty of this country to discover and initiate a project for world peace against which the objections do not lie which lie against America's participation in the league of nations, and which

radically undertakes to eliminate war as the league does not.

This country has long felt in its heart that it was in a peculiar sense the leader of the nations in the cause of peace. This sense of moral leadership did not derive from any assumption of superior virtue but from the peculiar conditions which have favored our republic. Our very youth, our geographical isolation, our conscious break with the political traditions of Europe, our composite population reflecting diverse old-world loyalties, our engrossment in the huge domestic task of growing a commonwealth upon the soil of these hitherto uncultivated hills and prairies, our relative economic self-sufficiency, certain forms in the structure of our government designed to make co-operative action with other governments difficult—these are some of the factors which conspired to create a national tradition of detachment, no less voluntary than it was necessary. It is not strange, therefore, that we shrink from any proposal to abandon this tradition, and to be drawn into the strifes and entanglements of Europe's politico-military system.

I defend this American tradition against all charges that it is ignoble, or selfish, or provincial, or lacking in idealism. It is, I concede, a tradition which may be put to ignoble and selfish and provincial and unidealistic uses, but rightly conceived and maintained, it is the stock upon which may grow America's most

significant and substantial contribution to the welfare of the world.

At any rate, this tradition had much to do with America's historic attitude toward world peace. The peace ideal has been a kind of truism with us. It needed no argument. It has always been held before our mind without effort or strain, chiefly because, unlike European mentality, our thoughts of peace were not inhibited or qualified by the perception of those formidable obstacles which, from the point of view of European experience, make a world without war a kind of millennial dream. We have not been agitated, as have the nations of the old world, with the haunting sense of insecurity. We held the ideal of a warless world without the cynicism which has always discounted the peace talk of the more sophisticated old-world diplomacy. This, I repeat, is due to no superior virtue on our part. It is due to our heritage and to our lack of Europe's heritage. It is due to those factors which created our tradition of detachment.

War as a continuing system, professionalized, prepared for, and ever in evidence, has been relatively unknown in the United States. It has always been difficult for our people to envisage war. It has always been easy for them to envisage peace. I am leaving out of account the developments of the past decade. The perspective in which these statements apply is the long vista of American history within

which our traditions took form. International war has been for us only an episode. The revolutionary war in which the nation was born, and the civil war by which it was preserved, belong in a wholly different category from wars between nations for the settlement of international disputes.* America's experience of such wars was so slight as to leave her tradition unimpaired and her virgin concept of peace uncorrupted.

Now it is this national psychology of America which, rightly regarded by ourselves as well as by others, is the world's chief asset for the attainment of permanent peace. If it is destroyed by dragging this nation into the political entanglements and military system of the old world, it will imperil the very goal which such involvement is designed to achieve. America, unentangled in the political affairs of Europe, is able to do more for world peace than she could possibly do as a partner in the complexities and strifes and military heritage of the old world. Her function is not to become a part of the European system but to help save both herself and Europe from that system. This function America can discharge by consulting her own genius and tradition, and developing them in the fresh light which has been kindled by the events of the past decade.

I contend, therefore, that my ardor for America's

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* See footnote on page 262.

acceptance of special responsibility in the movement for the outlawry of war is no mere patriotic caprice. Rather it grows out of an objective perception of the strategic importance of America's position and true spirit in relation to the present crisis in the peace movement. It should be much easier for the United States to offer the outlawry of war to the world than for any other of the greater nations to do so. The proposal is typically American. And that not merely by virtue of the fact that it first took form in the mind of a typical American citizen, nor that it received its first launching into public consideration by America's most typical statesmen and social philosophers, but because it is plainly the flowering of American idealism from Washington and Jefferson, through Sumner and Burritt and Emerson and Channing, down to the time of the great war.

America has always hated war—and in a different mood from that in which other peoples have hated it. Europe hates war with an emotion of recoil from its horrors the while it accepts its presence as an inevitable evil. This in reality is not hatred at all. It is fear. One does not hate an earthquake or a typhoon. One only fears them and cowers before them. But America has always hated war as an evil that should be abolished. This, I will grant, is due chiefly to the fact that we have known so little about its horrors, that we did not live in a perpetual nightmare of its imminence. But the fact that we have

known so little of its horrors has given us the freedom and calmness of mind to examine war more objectively, to discern its artificiality, its irrelevance and the secret of its sinister spell upon the nations. Thus a certain intellectual optimism with respect to the possibility of banishing war from human society has been characteristic of America's thinking about war. Our statesmen have been willing to go further in direct dealing with war than the statesmen of most other peoples. It would have been a psychological miracle had the idea of annihilating the war system taken form and root in the mentality of Europe with its overwhelming heritage of war. But for America, in her detachment, her comparative security, her not always winsome but never insincere sense of moral responsibility toward less favored peoples, the idea of expelling war from the system of international relations is a concept which forms itself in her thinking so naturally as to be almost inevitable.

III. AMERICAN PRECEDENT AND TRADITION

The incipient principle of the outlawry of war was woven into the fabric of our political system by the founders of the nation. Thirteen sovereign states, "jealous, jarring and perverse," as Hamilton said, were trying to effect a federal union. Their first act was to renounce their sovereign right to wage war. Any war-waging was to be done by the union, not by the states. The federal supreme court was clothed

with affirmative jurisdiction over all inter-state disputes, a jurisdiction bound by the provisions of the constitution and by the accepted principles of equity and law. In the constitutional convention of 1787, the question early emerged as to the means of enforcement of a judgment of the court rendered against one of the states. As the debate on this question proceeded it became clear that to provide for coercing a state by force was "unsound in principle" and held the seeds of war and the destruction of the union. The constitution therefore provided no means of enforcement against a recusant state, in contradistinction to individual wrongdoers who could be coerced.

The trustfulness of the several states in renouncing their right to wage war, and in pledging their obedience to the judgment of the court, was matched by the answering trustfulness of the union in providing no coercive sanctions. Thus within the system of these states war was "outlawed"; it had absolutely no standing in the legal structure which these sovereign states created. As the substitute for interstate war they set up a supreme court clothed with "original and exclusive" jurisdiction over the controversies of the states. The supreme court has exercised this jurisdiction over inter-state disputes for nearly a century and a half, without resort to force, during which time scores of controversies have been judicially and peaceably settled which might otherwise

have led to war.* Here in the very structure of the federal system of the United States is the foreshadowing of the outlawry of war on a world scale. Let the inter-state juridical arrangement of this federal system be extended to an international system, under a supreme court of the world modeled as nearly as may be upon the supreme court of the United States, and international war will be cast down from its present legitimate institutional status and abandoned and prohibited by the nations as the states of the American union have abandoned and prohibited it.

Alas, that Woodrow Wilson did not carry with him to Paris the wisdom of Hamilton, Ellsworth and Madison! Had he held to the peace idealism inherent in the structure of his own country's constitution, he could not have tolerated the fatal conformity of the league of nations to European traditions of force. The covenant of the league regards the nations as potential bandits to be held in restraint by the coercive sanctions of the war system

* It must be borne in mind that the civil war was not the result of a controversy between states, but of a dispute between certain states and the union itself. This was rebellion, and the war that ensued was therefore not analogous to an international war. Had it been a successful rebellion history would call it a revolution. Revolutionary war and wars of rebellion are against the law, in the teeth of the organized system in which they arise. International war is within the law. The effect of the outlawry of war would be to make war between nations illegal and criminal, as wars of rebellion are now.

itself. The American way would have been to regard the plighted word of the nations as worthy of trust and to match it with an answering trust which makes no provision for the commission of further barbarities of war in the name of peace. And if Europe answers that this could not have been done in 1919, with the momentum of war in control, such answer furnishes no valid reason applicable to 1927.

I am not attempting to read modern peace ideas into the minds of the fathers and founders of the federal union. The question of abolishing war between the states was not consciously the dominant purpose which led them to form the union. Many other purposes were involved. The question of eliminating the likelihood of war was incidental and necessary to these other purposes. Our modern way of looking at war was unknown to them. But they did face the question of banishing war from *their* world, the world of the thirteen states. And while they may not have been fully aware of the significance of their method for the world as a whole, it is only reasonable to assume that had the larger question definitely emerged, as it has in our day, they would have proposed a solution similar to that by which they had abolished war within the field of their sovereign entities.

The larger idea did, as a matter of fact, tease the mind of Jefferson—for whom, perhaps more than for any other of the fathers, the principles upon

which the union was consummated were capable of world-wide application. Henry Adams thus interprets Jefferson's outlook:

> Jefferson aspired beyond the ambition of a nationality, and embraced in his view the whole future of man. That the United States should become a nation like France, England or Russia, or should conquer the world like Rome, was no part of his scheme. He wished to begin a new era, when the world's ruling interests should become universal, when questions of boundary should become insignificant, and armies and navies should be reduced to the work of police.

But it was not long before the universal significance of this structural provision by which war was prohibited within the federal union was clearly and consciously discerned. By the time the middle period of our history was reached it had become a commonplace in all American peace thinking that the way to world peace lay in applying to international relationships the simple principle by which war had been "outlawed" between the federated states. This conception underlay and inspired the thinking of Charles Sumner, without doubt the ablest peace thinker and orator America had produced up to his time. His orations on peace, despite their pontifical style and their prolixity, should be a required reading course for every American speaker on international affairs. And yet how few of our contemporary internationalists show signs of even the slightest acquaintance with

him! If I had my way, I would arrange that in every audience in America gathered to hear an address on world peace or any aspect of world affairs, some one should arise from the audience and ask the speaker, before he began, this simple question: Have you, sir, read Charles Sumner's "True Grandeur of Nations" or his "Commonwealth of Nations"? If he replied negatively I should have him arrested before he spoke another word and sentenced to the city library for a half day!

Sumner discerned that the effect of our federal constitution was to make war between the states "criminal," and declared that if it is criminal to re-establish the institution of war within the union it is "criminal in the commonwealth of nations to continue it." He saw clearly the basic fact that international war is an *institution*, that it does not express some ineradicable instinct of human nature, or some need inherent in sovereignty, but that it thrives because it is created by, nurtured in and protected under international law. Change the law, said Sumner, turn the law against the institution of war, and war will disappear as other institutions inimical to social well-being disappeared when their roots were cut out of the tissue of the law. Wars occur, he argues, because there exists a war system, maintained by the will of the nations, which will is reflected in international law. War can be abolished only by abolishing the war system, and that can be done only through the

fundamental change of international law. Instead of laws regulating war there must be a law of nations prohibiting war. The very existence of laws of war, Sumner contends, implies authority "to modify or abrogate what it originally sanctioned or enacted." He continues:

> It remains that the authority by which the laws of war have been thus modified should entirely abrogate them. Their existence is a disgrace to civilization; for it implies the common consent of nations to the arbitrament of war as regulated by these laws. Like the laws of the duel, they should yield to some arbitrament of reason. If the former, once so firmly embedded in municipal law, could be abolished by individual nations, so also can the laws of war, which are a part of international law, be abolished by the commonwealth of nations. In the light of reason and religion there can be but one law of war—the great law which pronounces it unwise, unchristian, and unjust, and forbids it forever as a crime.

Sumner failed to follow his insight to its practical embodiment in a world court based upon a new body of international law, the law of peace, and lacking thus any vehicle of transmission except the device of arbitration, his idea stopped in its own tracks. But it reflected the thought of the galaxy of great minds gathered, in that classic period of American idealism, in the American Peace Society.

Sumner's great idea was buried with him. He himself shared in its obscuration. In 1875—twenty-five years after the orations in which he developed

his great thesis—he introduced in the senate a resolution concerning international arbitration, which proposed that "in the determination of international differences, arbitration should become a substitute for war in reality as in name, and therefore *co-extensive with war in its jurisdiction.*" The resolution contained no hint of carrying out his original master insight, namely, the turning of international law itself against the institution of war; it left the war system intact and erected arbitration as an alternative, not as a substitute for war.

IV. DEFLECTION OF THE PEACE MOVEMENT

With the revival of peace sentiment in the last two decades of the nineteenth century and the first decade of the twentieth, the concept of arbitration dominated all minds, resulting finally in the Hague conventions which furnished a mechanism designed to attract international disputes to an arbitral tribunal and to facilitate their adjustment. Arbitration, as we saw in chapter VIII, had been for a century an increasing recourse in international relations. Its use had been growing by a sort of geometrical progression. It had come to symbolize the very goal of peace itself. Thus with America's native concept in eclipse, the people and statesmen of this country fell in with the Hague conference proposal initiated by Czar Nicholas. No new insight was vouchsafed the Hague conferences. The discussions moved in the

conventional channels. The outcome was merely an improved and standardized scheme for arbitration, with more rules of war added to international law designed to make war humane. There was no talk then of a politico-military alliance of the nations. No question was involved by the Hague conventions of abandoning any cherished American tradition. Great Britain and America both had historically pursued a policy of so-called "isolation" from continental European affairs. The Hague conventions did not involve or affect these policies. Arbitration was the dominant ideal. There was considerable American sentiment favorable to the proposal to make arbitration all-inclusive, but European opposition kept the question from becoming a live issue. The net outcome was that accessible facilities for arbitration were provided at the Hague to which disputes could be carried by nations disposed to do so.

Then came the amazing disillusionment of the great war. The whole Hague scheme fell like a child's block house. All the wars which had been proudly "prevented" by arbitration were swallowed up in the terrific fact of a present world war. Men asked why the scheme had failed. Their answer came from minds seized with the temper of war itself. Our scheme has failed, it was said, because the Hague conventions had provided no force to *compel* the nations to carry their disputes to the court of arbitration. America was officially neutral, but

her psychology was a war psychology. Under the spell of allied propaganda the national mind was convinced that the explanation of the war lay in the simple fact that a "mad-dog nation" had gotten loose in the world. The natural reaction to that state of affairs was that the "good faith nations" must be leagued together to restrain "mad-dog nations." A new idea thus came into American peace thinking. It was the idea of *enforcing* arbitration. Excitedly, but naturally enough under the circumstances, the military concept was invoked to make the Hague conventions effective. Force must be coupled with arbitration. An organization sprang up in neutral America under the leadership of former President Taft, called the "League to Enforce Peace." It proposed that after the war there be formed a league of the nations to enforce arbitration. President Wilson adopted the idea, exploited it after America entered the war, and brought it back incarnate in the covenant on his return from the Paris conference.

Throughout these chapters I have been referring to the league of nations as the product of European mentality. In doing so I have not been unmindful of the fact that Mr. Wilson is credited with being the founder of the league, and of the presumption which naturally obtains that the league is therefore an American idea. This is not the place to consider the extent of Mr. Wilson's contribution to the league structure; we may waive all critical questions as to

the authorship of its various features, and concede as much to Mr. Wilson as the league itself attributes to him. But even though it were shown that the entire covenant of the league came from Mr. Wilson's brain, as Minerva full-armed from the head of Jove, it would not thereby be American in its character. It reflects not at all either America's historic achievement in abolishing war between our sovereign states, or the distinctive idealism with which her best thinkers had approached the problem of world peace. The league of nations was not born of the native American spirit. It was born of the war spirit which had seized the American mind. America's ideals were sacrificed at Versailles, no less in the treaty which flouted most of Mr. Wilson's fourteen points than in the covenant which he brought back to his people as the fulfillment of their aspirations for a warless world.

That European diplomacy had completely eclipsed the American point of view in Mr. Wilson's mind, is put beyond dispute by his astonishing approval of a triple military alliance, in time of peace, between France, England and the United States against Germany! It is difficult to believe that the Woodrow Wilson of this triple alliance was the same Woodrow Wilson of the fourteen points, or that the Woodrow Wilson who offered the American people the wider military alliance of the league was the same Woodrow Wilson who, during the war, me-

ticulously reflecting the American tradition, declined to refer to the United States as one of the "allies," but coined the expression, "allied and associated powers," to describe Germany's enemies! Explain it as we may, the fact is beyond question that the peace scheme issuing from the Paris conference involved both the surrender of one of America's most conscious and cherished traditions and the abandonment of the basic conception of the relationship of sovereign states as expounded and applied by the founders of this government. In no sense can it claim kinship with America's historic international idealism.

America's indigenous peace policy is in the line of the abolition of war through international law and a real world court, and not in the line of the enforcement of peace through political mechanisms and military commitments. The European idea is that if you have force enough you will have peace; that if force fails it is because there is not sufficient force; and that therefore more force must be piled on. The American idea from the foundation of our government down, is the reverse, and it has come to its true flowering in the proposal to outlaw war, a proposal which altogether reprobates and repudiates the efficacy of force for establishing either peace or justice.

V. AMERICA'S POLITICAL DETACHMENT

The American people acted on a sound instinct when they rejected the league. Our country thus

conserved for the world's ultimate advantage the priceless asset of her own peace tradition. Had we entered the league and become involved in the shifting combinations of European political interests we would have wasted the substance of our distinctive heritage. And to no purpose. How could we hope to understand such problems as those with which the league council has concerned itself since its first sitting? Our good-natured but detached and awkward entanglement in political details would inevitably dissipate our moral power for peace, and for all the really great common causes which we share with Europe as a whole. America has no place in the league of nations as an instrument within the war system. Its commitments are not for her to assume. Its politics are too remote and obscure for her to engage in without submitting herself to embarrassment, or by reason of her great power imposing her will unwisely upon others. In case of war resulting from political controversies the United States would be charged as a deserter or "quitter" if we did not go in.

America's *political* relationships with Europe should be only *ad hoc*, where her interests are clearly involved or her duty is unmistakable. Her *covenant* relationship to Europe and the rest of the world should rest upon a *juridical* foundation alone, where the full weight of her vast power may be exerted not for or against this or that nation or bloc

of nations, with resulting preponderance of force, but in support of the bulwark of an independent court, functioning for peace and justice, where a nation takes part in a dispute only when it is itself a party to the dispute.

Maeterlinck reminds us of the legend of the light-house keeper who with charitable sentiment doled out to the poor people of the village the oil which supplied his mighty lantern. Soon came the night when there was no oil and the huge ships dependent upon the light lost their way and struck upon the rocks. The conventional plea which sentimentalists make for the United States to "fling all caution to the winds" and enter "wholeheartedly" into the league organization with its consequences of entanglement in Europe's political and military system is false altruism. There is a self-restraint which is of the essence of unselfishness, and there is a charity which plays the prodigal with precious possessions. It is not always easy for a nation or an individual to discern the highest good. More by divine providence than by her own intelligent virtue America has been preserved from taking the course of international futility in which a policy of entanglement would have involved her. And we may well believe that the good fates had some end in view beyond America's own self-satisfaction. What other end save that this nation should let her light shine with new power for the common good of mankind?

VI. A FRONTAL ATTACK ON WAR

The confusion wrought in the mind of the nation by inseparably coupling the peace ideal with the league system has been deplorable. It is one of the most baneful of the many sad effects of the war. It has stigmatized the very ideal of peace itself, causing many minds to shrink from espousing what once they were proud to champion. The greatest task of our international statesmanship today is to rescue the peace cause from this league background, to isolate it from the meshwork of uncongenial political commitments with which post-war diplomacy has entangled it. World peace is a question all by itself; it is a yes or no issue in international relationships, requiring not at all the previous or the concomitant solution of any other controversial question. From root to branch it is the simple question as to whether the nations wish to perpetuate or to banish war for the settlement of their international disputes.

This is what the proposal to outlaw war does. It segregates the peace question from the issue of the league versus American tradition. It makes its contact with the peace movement at the point where American idealism was deflected by war psychology into political and military channels, and it carries to a consummation the quasi-juridical movement for peace which was beginning to find limited expression in the Hague conferences. It lifts the war and

peace question far above the tides and clouds of politics.

If there is anything sadder than the enormous slump in popular peace idealism since the league controversy of 1919-20 it is the breaking up of the peace movement itself into many hostile sects or camps. The peace prophets have become so absorbed in their own favorite mechanisms that they have almost forgotten what their mechanisms are intended to do. Partisanship for the league, partisanship for the court, for a disarmament conference, for the codification of international law, for military protocols, for Locarno agreements, for selective neutrality and all the rest, has obscured the main objective of abolishing war. Our internationalists have almost ceased talking about getting rid of war—though nine years ago we offered millions of lives and expended billions of treasure for that express purpose. Now we are talking in terms of "international goodwill," of "polite gestures," of the "Locarno spirit," of the "Geneva atmosphere," of peace as an "evolution" and of this and that "tiny step" toward the goal. The crusading passion of the earlier movement against war has been drained off into the channels of diplomacy where it flows respectably enough but without significance. From the moral battlefield we have retired to the manicure parlor where we are engaged in the gentle exercise of clipping the claws of the war monster.

Of the orthodox peace proposals now before the nations there is hardly one that is not tacitly acceptable to the war offices. No war offices are objecting to the league of nations, nor to the league court, nor to the general principle of proportional disarmament, nor to Locarno, nor to the league's scheme for the codification of international law, nor to "selective neutrality" nor to the "outlawry of aggressive war." The war system is left secure by every one of these devices. Why should the war establishments object? So long as the "peace" movement has the support of the military system the prophets of peace may be sure that their proposals are innocuous and futile.

What is wanted now is a peace movement that is distinguished by its clear-cut contrast to the war movement, a peace undertaking upon which no traditional war office can look with favor, a proposal that commits the nations to a peace system as they are now committed to the war system. There is no hope of such a real peace movement so long as our prophets are hopelessly involved in sectarian controversy over methods and devices and mechanisms.

Wherever open-minded friends of real world peace have fairly confronted the outlawry proposal, they have reacted to it with ardor and insight as the solving ideal of our recent unfortunate controversies. A leading peace organization, formerly outspokenly committed to America's adherence to the league, in defining for itself a new set of principles put the

outlawry of war at the very front of its program, declaring it to be "the unifying purpose and dominant motive of all peace groups." Under the power of this dominant ideal the same organization, instead of, as formerly, stressing America's duty to enter the league, now urges the league "to modify its structure and covenant so as to leave the United States no excuse for remaining outside."

The confusion and weakness of the peace enterprise have always been due to the fact that no one knows what the nations would do were they confronted with a simple yes or no issue, not on some proposed mechanism of peace, but as to their will to peace. No test has ever been applied. It is generally assumed that the peoples of the world yearn for peace. The outlawry of war movement presupposes that they do. But when the various mechanisms for peace are being considered the opposite assumption dominates the discussion. Such was the case in the United States senate on the last day of the world court debate, from which I quoted in the previous chapter. Why did the senate vote down the reservation intended absolutely to sever the court from the war system? The answer given by Senators Lenroot and Walsh was that the nations would be forced either to violate their agreement as members of the league, or to amend the military provisions of the covenant of the league, and it was not to be expected that they would do either. In short the contention

was that the league council would not give up its admitted power of war over the decisions of the court. Senator Borah professed his faith that the league could be prevailed upon to amend its covenant. But the court defenders contended that if this simple anti-war reservation were adopted the adherence of the United States with such a reservation would not be acceptable to the league because the nations would not relinquish their right to go to war to enforce the court's decrees.

Is this true? I for my part refuse to believe that the Christian nations would refuse to shut war out of the halls of international justice. More than that, I cannot believe that the mothers and taxpayers of the world would tolerate any government that would decline to deliver them from the war system if the issue were put in unambiguous and simple terms. *But no opportunity has ever been given for the nations to declare their attitude toward war.* The militarists may claim that no overwhelming international public sentiment exists against war, but they manage to see to it that no opportunity is given for public sentiment to express itself. It is high time such an opportunity were created.

VII. THE WILL TO PEACE

Here, then, is the pivot about which the whole peace enterprise revolves. The peace movement will always operate in the dark until there is a show of

hands as to what nations want peace and what nations want war. If the nations have the will to peace, and that will is once registered by the disavowal of the war system, the task of the peace makers will be one sort of task. If the nations, or if any substantial number of the nations, are so under the spell of war that they are unwilling to abandon the war system, the task of the peace makers will be a totally different sort of task.

Here is America's opportunity! She has been taunted by Europe and by many of her own citizens with having turned her back upon the cause of world peace in which she has exercised acknowledged leadership for a generation. No man who knows the heart of America can believe that taunting interpretation of her recent policy. Let her now turn the tables on her critics and accusers by stripping from the war problem every extraneous and irrelevant issue with which it has become involved and announce outright to the nations: We will quit the fighting method of settling our international disputes if you will!

The peoples of the world profoundly desire the co-operation of this nation in their effort at organizing the world for peace. But they desire our presence no more ardently than we in our deepest heart desire to share with them in this consummate task. America finds no satisfaction in standing apart. She is far from being happy in the necessity that was

forced upon her by the treaty of Versailles. In taking the lead toward the outlawry of war, her offer would involve in no sense any private nationalistic advantage. It would be an offer of the substantial thing on which all hearts are set. There would be no suggestion of selfish or timid conditions under which America might slink into the back door of a world organization with safety-first reservations. America would go in at the front door of the temple of peace whose portal no nation has yet crossed, and one by one the peoples of the world would join her.

With the outlawry banner unfurled on our national capitol there would surely ensue a world-wide popular uprising on behalf of a warless world. Gone would be all controversy over peace methods and mechanisms. Gone all inhibitions due to the effect of such a procedure upon long cherished national traditions. Gone all ambiguities under which militarism hides while it laughs at our peace prophets chasing illusions. *On the day after the senate of the United States passes the Borah resolution looking toward the outlawry of war the business of world peace will pass out of the hands of the war offices and the diplomats into the hands of the people themselves.* Then would begin the world-wide task of evangelizing the nations with the gospel of peace! What fountains of social idealism, of international understanding, of practical statesmanship and of religious passion would be opened up throughout the

world! The spell of war would be broken. A great new hope would arise in men's hearts everywhere. Abandoning as deceptive and futile all artificial attempts to restrain the war demon by military alliances of any and every description, the conscience and intelligence of mankind could then be mobilized in a frontal attack upon the war system itself. The period during which these moral forces were being released and mobilized would be the most stirring and glorious chapter in the upward progress of man. Indigenous peace impulses in every nation would be quickened and reinforced by the statesmanly collaboration of the peace forces of neighbor lands. We should see one nation after another unfurling the banner of international justice from its capitol as each in its turn responds to the challenge to outlaw war. The Christian religion, finding itself face to face with the possibility of realizing one of the fundamental ideals of its Founder would take on fresh increments of reality. The people given their chance, at last, to decide whether war should be perpetuated or abolished, would speak, and their voice would be indeed the voice of God!

ADDENDUM

"OUTLAWING WAR" BY TWO-POWER TREATIES

IN the opening chapter of this book I pointed out that the peace movement in America, confused and frustrated by the failure of the United States to join the league of nations or adhere to the world court, is now engaged in searching, more or less at random, for a program. Certain antiquated peace devices, previously discarded, have been revived and new schemes projected. Several of these have attracted our attention in various connections in these chapters. They are being put forward with fresh zeal in the discussion of a proposal made by M. Briand for the "outlawry of war" as between France and the United States. The importance of this offer from the French minister of foreign affairs can hardly be exaggerated. But it is no less important that America's response to the proposal shall not be loaded down with these impracticable and dangerous devices.

On the tenth anniversary of America's entrance into the world war, M. Briand declared that "to furnish a solemn example to other peoples, France would be willing to subscribe publicly with the United States to any mutual engagement tending to

outlaw war, to use an American expression, as between these two countries." Continuing, he said:

> The renunciation of war as an instrument of national policy is a conception already familiar to the signatories to the covenant of the league of nations and of the treaties of Locarno. Every engagement entered into in this spirit by the United States toward another nation such as France would contribute greatly in the eyes of the world to broaden and strengthen the foundations on which the international policy of peace is being erected. These two great friendly nations, equally devoted to the cause of peace, would furnish to the world the best illustration of the truth that the immediate end to be attained is not so much disarmament as the practical application of peace itself.

I. DETACHING PEACE IDEAL FROM LEAGUE

This proposal has awakened widespread enthusiasm in all American groups of peace advocates, both those whose minds were formerly moulded by the European system and those who conceive world peace in terms requiring direct dealing with the institution of war through international law. Among outlawrists the Briand offer is hailed as the most advanced practical suggestion yet made by any government for dealing with war in terms looking toward its outlawry. Though the suggestion does not envisage the goal of universal abandonment of war, it clearly points *in that direction.* If the path which it opens up is followed sincerely by the statesmen and people of both countries, it can lead nowhere

else but to a world-wide movement for the outlawry of war "as an instrument of policy," to quote M. Briand's happy phrase, among civilized states.

I desire briefly to suggest the bearing of this proposal upon the program of world peace as expounded in this book. But before doing so, it seems well to examine the type of response which the proposal has elicited in those American circles which until most recent times have faithfully reflected the European point of view in their peace thinking.

It is interesting, in passing, to note the sort of apologetic which is put forward in such circles on behalf of America's acceptance of M. Briand's proposal. Dr. Nicholas Murray Butler reflects the new point of view of the more European-minded groups when he paves the way for America's response to M. Briand in the following words:

> M. Briand's mind is thoroughly practical. He does not ask the government of the United States to accept the covenant of the league of nations; he does not ask the government of the United States to accept the principles of the pact of Locarno; he does not ask the government of the United States to adhere to the protocol for the establishment of a permanent court of international justice. All that he asks is that the people of the United States shall take their own way to express the fact that in no case will they employ war to enforce their policies with reference to France.

Others stress the same virtue in M. Briand's offer. Prof. James T. Shotwell is more explicit. In com-

mending a draft treaty designed to extend the renunciation of war to other nations as well as France and America, he says it "carefully safeguards America's sovereignty," and "has avoided all the entanglements of the league covenant." This avoidance of entanglement with the league, however, is not regarded as derogating in the least from the strength and adequacy of such two-power treaties as bulwarks against war. On the contrary, according to Professor Shotwell, as such treaties renouncing war are multiplied so as to include other powers besides France and America they would "so extend over the world the spirit of Locarno as to ensure not only effective measures of disarmament, *but world peace in so far as it is possible to guarantee peace by such measures of international insurance.*"

A significance attaches to such words quite aside from the merits of the scheme which they commend. They reinforce the underlying thesis of this book, namely, that the cause of world peace now urgently requires the complete detachment of the peace goal from the league system. And this in itself is salutary. At last our orthodox peace groups, but recently advocating America's entrance into the league of nations as the one and only way to world peace, have adopted a peace proposal one of whose outstanding virtues is declared to be the fact that it does *not* implicate the United States in the league system at all!

II. DRAFTS OF BILATERAL TREATIES

The proposal of M. Briand has stimulated in many peace circles the drafting of treaties for carrying it into effect. These drafts are described by their advocates and by the public press as plans "to outlaw war between France and the United States." Professor Shotwell's scheme is formally entitled "An American Locarno," intended to apply not only to France but to other nations willing to join the United States in similar mutual commitments. It is difficult to understand why this draft should be christened "An American Locarno" when one of the most essential and distinctive features of Locarno, the military guarantee, is entirely lacking. One cannot help recalling with a touch of amusement that the Geneva protocol of 1924 *which was based upon force* was interpreted to America as a plan to outlaw war, while this draft of a bilateral treaty *which excludes force* is christened a new Locarno! This only indicates that while the process of detaching the peace ideal from the European background has gone far, there yet remains the *sentiment* of the former attachment which must express itself somehow, if only in the choice of a nick-name!

To most of the specific features included in these various treaty drafts I have given sufficient consideration elsewhere in these pages. It would be unprofitable to examine them here in any detail. But it

is important beyond all exaggeration for American statesmanship and public opinion not to be led by such drafts into proposing a treaty to France the effect of which will nullify the substance of M. Briand's magnificent offer. Most of these draft treaties provide for all-inclusive compulsory arbitration. Such a provision, as we have seen, is bound to be mischief-making. Professor Shotwell's draft while avoiding this fallacy contains other features equally objectionable and dangerous. He keeps alive the distinction between *kinds* of war, "aggressive" and "defensive," which we have seen is an utterly impracticable distinction to apply to modern warfare, and fatal to any peace plan. This draft undertakes to determine the "aggressor" by using a "test" which we saw in chapter XII implies an amazingly unrealistic presupposition as to the way modern wars begin. The proposed treaty also involves the signatories in the futile obligation of what I have called selective neutrality, based upon the theoretical application of the so-called "test" of the "aggressor." One is also amazed to find that this document makes an exception of disputes affecting "the vital interests, the independence and the honor" of the contracting parties. This is the famous exception designed by war offices to render of no effect every treaty in which it has ever appeared.

As I have said, I am not undertaking a critique of the contents of these draft treaties which have

been put in circulation. I am merely calling attention to a few of their specific features against which it is important that public opinion in America shall guard the reply which this government shall ultimately make to the French offer. Behind the question as to its specific features lies the question as to the general character of a treaty which would befit the spirit of M. Briand's proposal for the renunciation of war as between the two peoples.

M. Briand's proposal is expressed in simple and general terms. There is no indication that he conceives of such an agreement as requiring the mutual acceptance of an elaborate and definitive apparatus for settling disputes between the two nations. And I am convinced that the cause of world peace will not be best advanced by the crystallization of this friendly overture in the form of an elaborate treaty drawing into its folds voluminous provisions for disarmament, arbitration, codification, conciliation, etc. Besides, there already exists more than enough apparatus for the purpose. The Hague court, of which both France and the United States are members, the permanent court of international justice, which is open to any nation, as well as various special methods of conciliation and arbitration established by precedent and convention—these leave no need for the construction of other mechanisms for the arbitration of whatever differences may arise between France and the United States under a treaty renouncing war.

If a pact is to emerge from the negotiations it seems evident that it should be a brief and simple commitment of the two nations to the disavowal of war in their mutual dealings, formulated with due restraint on the side of mechanism, and pointing toward the universal outlawry of war as the goal to which both nations aspire. A treaty of this character would be a more fitting response to the mood in which France's offer is conceived than one weighted down with an elaborate technique of arbitration, disarmament, codification and other procedures. The simple, hearty terms in which M. Briand expressed his proposal imply that it was conceived by him in a spirit of broad magnanimity, and our response should be equally simple, untechnical and hearty.

But the nature of our response to France should be determined by other considerations besides international courtesy. It is vital to the cause of peace itself that an agreement such as this, renouncing the use of war as between the two nations, shall not attempt to establish and standardize a comprehensive mechanism for world peace. The mechanism of world peace must be a *world* mechanism—the world must be juridically *organized* for peace, as I have argued in chapter VII. Any attempt, on the basis of a two-power pact renouncing war, to tie the two powers to a complex apparatus is premature, confusing and dangerous. To claim, as is claimed by

the advocates of some of the draft treaties which have become extant since M. Briand made his offer, that the mechanism provided by such drafts is competent for the maintenance of peace on a world scale is simply preposterous.

It were better in the case of France and the United States for each party to *trust the honor* of the other to keep its pledge renouncing war and to refrain from all acts the commission of which would violate the spirit of the covenant, than to load the covenant down with fixed mechanisms under the illusion that the procedure of these two powers would furnish a model of procedure for the universal outlawry of war.

III. LIMITATIONS OF A BILATERAL PACT

This will be made plain, I think, if we consider the limitations to which any mechanism of procedure under a two-power treaty is subject, as compared to the situation which would obtain under the general outlawry of war. It will suffice if I state only three. But each is fundamental and vital.

The most obvious limitation to which a bilateral treaty renouncing war is subject is the fact that it leaves the status of war as a legal institution wholly undisturbed. This means, as we have seen, that such a treaty does not and cannot deal with the *whole fact* of war. It leaves out of account the most important thing concerning war, namely, its entrenchment in the

legal system of the society of nations. Of course, two nations by themselves cannot be expected to change international law, and it is no reflection upon either that a treaty between them fails to do so. It is one thing to renounce the right to go to war against a particular nation, and it is quite another thing to participate with the civilized nations of the world in a treaty abrogating and making forever illegal the use of war as an instrument of settling international disputes.

This is no mere doctrinaire distinction. It goes to the very heart of the question of war and peace. It is a distinction which will register itself in the concrete situation in which a nation finds itself as it contemplates an act of war. Let us visualize two crises, one in which a nation bound by treaty with another nation not to go to war contemplates the breaking of its treaty and going to war *under the sanction of general international law;* the other in which a nation contemplates the violation of international law itself by going to war, thereby accepting the brand of criminal at the hand of the society of nations. Wholly different presuppositions will underlie the thoughts of a nation contemplating these respective courses. Wholly different inhibitions will operate in the two situations. The bilateral treaty not to go to war will hold good up to a certain point, but it cannot be presumed to have the strength of international law itself. The relations of the nations are too complex for that. It is as strong as any other treaty, but like

all treaties its strength is subordinate to the unchallenged power of the legalized war system which may engulf both signatories. If the dispute reaches the point of threatening war the legalized and dominating war system may take possession and the bilateral treaty become, *nolens volens*, "a scrap of paper."

Only by making war legally unavailable—that is, a recourse inhibited not only by the plighted honor of the nation which contemplates it, but also by the concerted moral purpose of the entire society of nations—can the will to peace be depended upon to function.

This is simply another way of saying that war must be put outside of international law; the protection of law must be withdrawn from war and turned against it. If it is replied that the effect of the multiplication of bilateral treaties until all the nations are bound by a criss-cross system of such treaties will be equivalent to a general treaty outlawing war, I would agree, so far as the bare renunciation of war is concerned. But it is more likely that after a few such bilateral treaties are negotiated this slow and indirect method will be abandoned and the nations will turn to the obvious device of calling an international conference to adopt a general treaty outlawing war.

I say I agree *so far as the bare renunciation of war is concerned.* Which brings us to a second limitation

upon the bilateral treaty as a method of outlawing war. The *outlawry* of war is not the same as the bare *renunciation* of war. War will not be fully and securely outlawed until a genuine and adequate substitute for war has been set up. The nations will and must agree, within the limitations of their national ways of life, to equip an international court with a code of the law of peace, and clothe it with affirmative jurisdiction. As I have repeatedly indicated in these pages, the general renunciation of war is the absolutely indispensable condition of establishing such a court. But obviously, two-power treaties, no matter how numerous they may become, are in themselves unable to create such a court for the administration of the international law of peace.

Mankind has slowly and painfully developed and established such a judicial system as a means of order and justice within each civilized state. With war renounced, it will remain for the peoples of the world to carry over to the international sphere this institution of law with which they are already familiar.

It remains to mention a third fundamental limitation upon bilateral pacts renouncing the use of war. A two-power treaty against war implies a two-power war. But the day has arrived when the kind of war we have to provide against is the war of vast combinations, the war of alliances. The two-power war is incidental to our main problem as peacemakers.

Yet most of our peace mechanisms—including the elaborate mechanisms provided by some of the draft treaties emerging in American peace circles in response to M. Briand's proposal—are based upon the old-fashioned imagery of a two-power war. That was the naïve picture of war in Mr. Bryan's mind when he projected the treaties which Messrs. Shotwell and Chamberlain recovered from innocuous desuetude and made the basis of their proposed bilateral pact. No bilateral treaty mutually renouncing war will have any dependable standing before the threat of a world war or even a regional war. If the treaty which M. Briand proposes is eventually adopted and ratified by the United States and France, allowance must be made in our expectations for the possibility that if a war arises these two nations might easily enough, despite their two-power treaty, find themselves on opposite sides of the conflict by virtue of being drawn into opposing combinations.

IV. A NEW ATTITUDE TOWARD WAR

Let me not be misunderstood. I am calling attention to these limitations upon two-power mechanisms of settlement not for the purpose of discounting the significance of a two-power treaty "outlawing" war between the signatories, but for the purpose of utilizing to the fullest extent its real value as an enormous contribution toward the actual outlawry of war.

The significance of such a treaty would not lie in the sphere of mechanism, but in the sphere of the spirit. A Franco-American treaty banishing war between the two countries would be the expression of a new mind—a new outlook—a new attitude—toward war. In the nature of the case its contribution could not be measured in terms of a particular apparatus of arbitration or conciliation. The apparatus proposed would be as available if not mentioned in the treaty as though it were included. And to load down the treaty with such apparatus would merely bind upon the two nations a fixed procedure in a field in which they will do better if there is ample leeway for choice among the various alternatives now existing.

Let the treaty be as simple, I repeat, and as broad as the language of M. Briand's proposal itself. To cast it in a technical mould, with qualifying clauses here, and restrictive provisions there, with an elaborate mechanism of procedure for one set of circumstances and another equally definitive mechanism of procedure for another set of circumstances, would be to clutter up and strangle the simple, epoch-making avowal that in no event will either nation ever resort to war or the use of force against the other. Any mechanism for keeping such a covenant of good-will will be tentative at best and vulnerable to a thousand criticisms and conflicting constructions if it is written into the text of the treaty.

All provisions for codification, disarmament, con-

ciliation, etc. are irrelevant and confusing. Such exotic considerations should not imperil the high adventure of two great peoples who are determined to trust each other to do justice without so much as the shadow of a threat of force thrown between them. I could wish, for my part, that an instrument might be drawn up and approved by our government, so simple and direct and hearty that it would hardly fill a single page of this book, pledging France and the United States to the abandonment forever of the use of war as between themselves.

Two nations having in good faith put war and the threat of war behind them would readily set up the appropriate mechanism, if any were needed in addition to that already existing, for the purpose of carrying out in good faith the terms of their treaty.

V. WORLD OPINION AND TWO-POWER PACTS

No doubt the international gossip-mongers will busy themselves in telling just why France proposed such a pact with the United States or, if it is finally consummated, just why each nation entered into such an engagement. The motives imputed will be quite other than an unalloyed love of peace. It will be said that France desires a specially favored relation with the United States. Minds of this type would, no doubt, recall the failure of the United States to ratify the tripartite alliance with England and France against Germany, which President Wilson brought

home from Paris. Having failed to secure a whole loaf, it will be said that France is naturally not unwilling to accept half a loaf. The possibility of world opinion interpreting the treaty as a quasi-alliance, or at any rate an entente, in which France receives tacitly more than is specified in the instrument, or at least assures herself of the good will and moral support of the United States in the event of another war with Germany—this possibility is plausible to the suspicious mind, because throughout history military alliances have been clothed in pious words of peace. If the proposed treaty with France is to be a mere repetition of that method of old diplomacy it would be as injurious to world peace as the recently proposed English-speaking alliance, whose inappropriateness has become apparent to the better intelligence of both Britain and America.

I see no reason why the motives of France should be questioned in making the offer to abandon war with the United States. But there is no need of arguing against this cynical interpretation, for the compact proposed is of such a nature that the motives actuating it and the use to which the two parties intend to put it may be decisively tested. *The sinister or selfish character of such a treaty would be clearly revealed by the attitude of both nations toward the negotiation of similar treaties with other nations.*

A Franco-American treaty under the guise of peace, which either power would be unwilling to offer

to or accept from other civilized nations, would be presumptively a treaty to secure some other advantage besides peace. But such interpretation would be absolutely overcome by the offer on the part of both signatories to negotiate similar treaties with other nations or to accept them when offered by other nations. There are but two *good* reasons why either France or the United States should desire to enter into an engagement renouncing war as between themselves. One is that they would thereby remove the possibility of war between themselves, the other that they would thereby contribute substantially to the outlawry of war by the society of nations. Whatever benefits to themselves would flow from either of these achievements would be only the legitimate fruitage of peace.

Thus cleared of ulterior intentions, this proposal of M. Briand is pregnant with significance not only for France and America but for the peace of the world. If a simple, unencumbered treaty such as I have above suggested can be successfully negotiated by these two great and influential powers, the logic of such an accomplishment, together with a prudent regard for its correct interpretation by world opinion, commits both nations to go further. Neither can stop with this single two-power treaty. Each must stand ready to enter into a covenant renouncing war as between itself and other willing nations.

This is simply another way of saying that France

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and the United States must look with the same favor upon a universal treaty outlawing war as upon their bilateral treaty outlawing war between themselves.

But this means, on the part of the United States, nothing less than the adoption of the Borah resolution for the outlawry of war *as the peace policy of this nation.*

On the part of France it would mean, in principle, the same—a French "Borah resolution" adapted to the special point of view of that nation as the Borah resolution is adapted to the point of view of American history and institutions.

With both France and the United States thus committed to the universal outlawry of war *as their avowed policy for world peace*, their invitation to other nations to join them in realizing the goal would be irresistible.

AN AFTERWORD

By John Dewey

MR. MORRISON has covered the various questions involved in the outlawry of war so completely that I can only repeat in other words what he has said. And as his words are more eloquent and forceful than those at my command, to essay this task is superfluous! Why then do I accede to his request to append some words to what he has written? Chiefly because I am glad of the opportunity to ally myself in any possible way with the movement which he has so convincingly shown to be the only way to get rid of the curse of the war-system. There are three points to be especially emphasized in my remarks. Outlawry of war releases and makes articulate the international spirit of our own day. It liberates and organizes the moral factors of mankind. It exemplifies all that is fundamental and effective in the significance and function of law in human history and life.

I. EMANCIPATION OF THE INTERNATIONAL SPIRIT

It is a commonplace that steam and electricity have made the nations of the world increasingly interdependent. They have drawn the peoples of the earth, for weal and for woe, closely together. Interdependence is a condition of many things better than

those which mankind has achieved in the past. But interdependence in and of itself is not necessarily a good. A condition of good is not an achievement of good. For interdependence is also a condition of many new evils, and of the manifestation of old evils on a vaster scale. The barriers which once isolated peoples made it impossible for them to co-operate fruitfully with one another; but they also rendered it impossible for them to fight and exploit one another. There was a time when the idea of impressing men in one continent and transporting them across an ocean that they might work as slaves in another was unthinkable. There was a time when wars were localized, restricted to neighbors. Now all nations are contiguous in effect; states from every continent on the globe took part in the last war, which was truly not just in name a world-war. Before the newer industrial regime, it was unthinkable that exploitation of backward nations should be undertaken for the sake of control of raw materials and finding of markets for manufactured goods. For half a century it has been a regular procedure. Interdependence is an ominous as well as a promising fact. It is as yet undetermined to which side the balance will incline. What is to be done with our newly acquired internationalism, what it is going to do with us, is one of the few momentous issues of history.

While economic forces have brought about the

present world internationalism, the results extend far beyond industry and commerce. They extend beyond the political area, whether diplomatic or military. It is a commonplace that the discoveries of science and the fruitions of art now quickly become the possession of the whole world, and that the nations are sharers in a noble emulation. Of this aspect of internationalism we cannot say what we have said of our economic internationalism, that it is fraught with danger and threat of evil. But nonetheless there is a problem. We hear much of the "international mind" in these days. But "mind" has two meanings: there is mind in operation, mind incarnate in action; and there is mind which is but sentiment and pious opinion, mind which denotes indulgence in ineffectual idealism, reverie and self-deception. Such international mind as now exists belongs largely to the latter kind. What channels of operation has it which enable it to affect seriously the course of affairs? It is a fine thing in itself, and lends itself to eloquent discourse. But it exists *by* itself, as in itself, in separation from the practical hurly-burly of the world. Aside from the valuable satisfaction it affords the persons cultivated enough to have it, it is hard to point to any significant achievement to its credit.

Thus the question of liberating and making articulate the internationalism of the modern world has two sides. It is matter of utilizing for good the

economic interdependence of the peoples who inhabit the earth, and of making it possible for an international mind to function effectively in the control of the world's practical affairs.

It is submitted that outlawry of war is the means and the only means of transmuting existing internationalism in both these phases into a power for good in human life. The problem of utilizing international industry and commerce for the enhancement and bettering of human life is largely one of prevention. They may work for mutual advantage when they are prevented from operating to the one-sided advantage of strong states and to the detriment of weaker ones. It is the ever-present threat of the use of force by navy and army, on the part of nations strong in actual and potential equipment for war, which is the essence of that exploitation which is called economic imperialism. The effect of the war-system is not measured, moreover, by the wars which have been overtly waged for economic reasons in the last half-century. The war-system is in the background constantly in times of peace. It is the possibility of resort to armed force which controls to-day for the most part the relations of the industrially backward nations to those economically advanced. Any one who is in contact with inhabitants of the Orient knows how rapidly the sentiment has grown among them that force is the only thing the western powers respect and that therefore it be-

hooves the eastern peoples to militarize themselves. Volumes could not say more as to the rôle of the war-institution, overt and latent, in deciding the form which economic internationalism now takes. Like the air we breathe the institution is bound up with all the facts of the present relations of nations. It is consequently almost impossible for the imagination to realize what the economic interdependence of people would become if the heavy hand of the war-system were removed. But think away the influence of that hand, ever-ready in the background, and the imagination, accustomed as it is to think in terms of the threat of force, will at least feel an enormous liberation, the lifting of an awful burden.

The removal of the same burden will enable the international mind to expand and take in those who are now ultra-nationalistic, and who think of patriotism not as public spirit but as antagonism, veiled or truculent, of one nation to others. What is even more important, it will enable the international mind thus released to become a working reality. It will cease to be a private indulgence, a mark of cultivation, a theme for the platform and the printed page. It will have a career of action opened in which it may freely and abundantly express itself. The intellectual, artistic and religious unities of mankind will have a free and fair field in which to flower and produce their fruit. They will be relieved of the enormous financial oppression which now weighs

upon the tax-payer in every nation, an oppression due to the direct and indirect demands of the war-system. But this gain is negative and external compared with that which will accrue when men and women of all peoples find themselves able to think of themselves as active cooperators with those of other nations, emancipated from all the suspicions, jealousies, fears and hatreds which issue from the war-system only themselves to issue betimes in more wars. I confess to a sinking of the heart when observation reveals so many persons who believe in international good-will who are content to tinker with secondary projects, instead of building upon the foundation which will insure effective emancipation of the international spirit.

These considerations are general. They appiy, however, with peculiar force to the American people. Our geographical isolation has since the war been petrifying into isolationism as a policy, as an idea. Our latent nationalist exclusivism shows signs of becoming an offensive militant nationalism. We are in danger of surrendering our traditional feelings of amity for an arrogant self-sufficiency. One factor which has produced this result is the fact that it has been so ardently preached to us that the key to and center of all international cooperation is political cooperation with other nations, especially those of Europe, thus becoming part and parcel of what Mr. Morrison calls the European system. I do not see

how any thoughtful person can deny that the campaign for the method of political alignment has not only not released international spirit, but has hardened tendencies toward isolationism. It has operated as far as it has had a significant effect to dry up our international idealism, or to divert it into futile and wasteful channels.

The reasons are not far to seek. Physical distance, geographical aloofness, counts. We have so large and rich a country of our own that appeals to mix in the politics of another continent leave us cold. We are all of us immigrants of varying dates. Many, perhaps most, came over here because there was something in the old world they wished to leave behind, to get rid of. The general disillusionment which followed the glowing hopes of a war to end war, the terms of the peace treaty, the more intimate and widespread knowledge of European politics, of the rivalries and diplomatic methods, have created an aversion to getting intermixed politically with Europe, an aversion of a kind which easily grows into a complacent holier-than-thou attitude. These conditions and others of the same general kind strengthen the idea that if incorporation in any form or guise within the political system of the old world is the only method of international cooperation, we will stay by ourselves, isolated, aloof, self-sufficient. It is this kind of situation which enables superpatriots and would-be witch-burners to use even the

word "internationalism" as a term of reproach and abuse.

For our own country, especially, it would then be an enormous release to place our formal and official relations to the other countries of the world on a juridical basis. It would disentangle sentiment and opinion from danger of getting mixed in political matters which are not only remote from us but which are opposed to our traditions and interests. As I write there has come into my hands a document which is the output of professionalized militarists—and as Mr. Morrison points out, war as an institution necessitates the cultivation of the militaristic spirit as a profession which carries on its business in times of peace. The document is issued in behalf of the "Military Departments of American Universities and Colleges." It is a deliberate attempt to cast discredit, by name, on more than fifty representative men and women of America, college presidents and teachers, philanthropists, editors, United States senators, clergymen, all persons of some distinction, and some of them among the most worthy citizens of the country. Their crime is that they are interested in developing the spirit of peace and international cooperation in this country and opposing the Prussianizing of American institutions, particularly our schools. The evident desire is to intimidate all opposition to militarism by identifying those who work for peace

with bolshevist communism. Since these persons mentioned are internationally minded, and wish to do something about it and not simply talk generalities, they are said to be either the unconscious dupes or the willing tools of the Third International.

The attack cannot be dismissed as trivial merely because it is ridiculous. The instance is submitted as a typical exhibition of the inevitable effect of the war-system in the first place in creating a professional group seated in high and influential positions who identify militarism with loyalty to the country; and secondly of putting in their hands a powerful weapon with which to repress all upholders of international good-will, friendship and cooperation. Until war is outlawed, the international mind will be forced back into a realm of sentimentality, ineffective aspiration, futile dreaming, because efforts to give it active expression will be represented as disloyalty to our own institutions. Detailed argument seems unnecessary. The reader is invited to consider the matter and see what method save mutual agreement to outlaw war will unite loyalty to national affairs and interests with full and abundant release of that amity and cooperation among nations, economic and spiritual, which constitutes internationalism.

II. LIBERATION OF MORAL FORCE

Mr. Morrison points out, as Mr. Levinson and others before him have done, that the war-system

inevitably operates to generate moral division and paralysis. Nothing is more serious than conditions which compel masses of men to split into two antagonistic parts their moral beliefs and allegiances. There are a few persons who solve the difficulty by standing out against war on moral or religious grounds under all circumstances whatever. I have no word of reproach for them. But the masses of men never have been, and in my judgment, going by experience, never will be of this mould. We are nourished in the bosom of our own country; we owe to it indirectly if not directly our protection, security and opportunities for development. It is no easy matter in time of war to break these ties and to put ourselves in opposition to the expressed will of one's mother country. For these reasons millions of persons who live in the spirit of peace in time of peace feel bound to support their own country in time of war. Law is on one side, domestic law and international law, and that law sanctions war and demands some degree of active participation in war; ordinary every-day conscience is against war, against organized killing and organized hatred. This dualism reaches deep and extends far and wide. There is one obvious remedy. Place law on the side of conscience. At present the lover of peace becomes the criminal, the outlaw, in time of war if he ventures to hold out for peace. Outlaw war, and the law is on the side of peace and moral con-

viction. The criminal, the man who sets himself in opposition to the law of his country and of nations, will then be the man who foments and instigates war. I can only express my surprise that clergymen, educators, public servants and others interested fail to see that the only way to emancipate, organize and consolidate the moral convictions and loyalties of citizens is to deal at the root with the cause which creates moral impotency and division, by placing law on the side of mankind's moral desires and beliefs instead of, as it is now, in opposition to them. This brings us to the third point.

III. THE FUNCTION OF LAW

Mr. Morrison has repeatedly in the following pages called attention to the point of view of those who oppose or are indifferent to the outlawry movement because they misconceive the nature of law in general and the law against international killing in particular. There are even intelligent persons who state that they do not know what is meant by saying that war is now legal, and that it is an acknowledged and legitimized political institution for settling disputes. At first sight such a position may seem like inexcusable ignorance. In reality it indicates how a legalized state of affairs once it has been long established is taken for granted; it is so habitual, so matter of course, so thoroughly bound up with the course of affairs—in this case the course of in-

ternational relationships—that it is not thought of. The thing which attracts attention is simply the occurrence of overt wars, which are then taken by some to be regular inevitable events like volcanic eruptions and earthquakes, and by others as deplorable incidents to be dealt with one by one.

It is the fundamental pervasiveness of war as the legalized method of settling disputes among nations that causes these persons to be unaware of the fact that it is an established political institution. This statement is no more paradoxical than is the fact that we have no direct perception of other settled conditions, like the air we breathe, the physiological conditions of the body, but only of some disturbance in them. The first point then upon which to be clear with reference to the relation of law to war is that it is *not a question of having for the first time a connection set up between war and law, but a question of having law set against war instead of for it.* It is not just a matter of "passing" a law against war, of issuing a ukase, but the life-and-death matter of altering the system under which nations live. This is the essential meaning of Outlawry; no one who realizes this meaning will consider the relation of law to war to be a trivial matter. Let there be no mistake about this matter. All those whose profession and whose interests are bound up with the war-system see the point. Are those having an interest in having an orderly, cooperative system

substituted for one of mutual fear, hostility and destruction, to be obtuse?

Another way of approaching the question of the relation of law to human conduct and relationships is to consider the historic development of law. Every student of history knows that there was a time when individuals were judges and executors in their own behalf in all cases of injuries received. The right of "self-help" was universal. Any person who was wronged or who thought he was injured was sovereign judge of what he should do to set the wrong to rights. There were no courts, no sheriffs, no representatives of the public to intervene. Blood feuds were the result. Gradually courts and public officials representing law developed. The settlement of disputes and the redressing of injuries was taken out of the hands of those directly concerned and who settled their disputes by force between themselves. Law intervened in behalf of pacification. *The historic rôle of law has been a means of "keeping the peace," of adjudicating disputes without recourse to violence.*

As between individuals, the duel was the last vestige of a regime once universal. When the duel was put under the ban of law, every form of dispute and conflict betwen individuals was taken out of the realm of settlement by force and brought under the rule of law. Disputes between nations are the one remaining form of human conduct where resort to

settlement by violence, organized violence, is sanctioned by law itself, instead of being brought before a public tribunal, operating under uniform rules, for decision. The outlawry of war is thus no sporadic fiat, no gesture made on paper. It is the completion of the historic experience, the accrued wisdom, of mankind as to the most proper way of settling disputes and conflicts of interests. It applies to controversies between nations the method which has already been worked out to care for all other controversies which threaten to break the peace and order of social life. Considering that the consequences of settling disputes between nations by force far transcend in evil those which result from settling private and personal disputes by violence, it is strange that any one should fail to see that the relation of law to organized national violence is the most momentous of social issues.

To apply the current bias against over-legislation, against trying to make persons "good" by rules of law, to the outlawry of war is thus totally aside from the point. The analogy of the relation of law to war is not with sumptuary or prohibitory legislation, but to that law which provides that concrete conflicts of interest shall not terminate in recourse to destructive violence. To doubt the function of law in this latter respect is to contradict all human experience; it is to invite return to private anarchy in all phases of conduct. To regard the outlawry of war

as mere prohibition of war, akin to issuing edicts against earthquakes, is the most lazy and superficial kind of thinking. Its essence is positive and constructive:—the provision of orderly methods, agreed upon between nations and to which their honor is publicly pledged, by which disputes may be settled without recourse to organized violence as the ultimate arbiter. When the method is once instituted no one will wish to return to the present method any more than any one would now propose to return to the primitive savage method of settling private disputes by private feuds, private wars. It will then stand out beyond a peradventure that our present method is a projection of barbarism into civilization, so that the barbarities of war, direct and indirect, are the necessary results of perpetuated barbarism. Instead of being trivial and episodic, the relation of law to war as a method of settling controversies is the issue of civilization against barbarism. The history of mankind is the proof of this statement.

Finally, the question of the function of law in respect to war rests upon the moral issue already touched upon. It is true that there is a great difference between law in fact, law in action, and words written upon paper. Unless there is a deep and widespread need for a public measure, a law is merely "passed" and then is passed over. I cannot imagine any sane human being denying that the

existing status of international relationships with their frequent culmination in wars, establishes a need. If there is such a person I for one can no more argue with him than I could reason with a person who holds that bodily diseases create no need for measures of prevention and remedy. But there must be something more than a need. There must be an acute and general recognition of the need, a consciousness of trouble and evil, if the rule of law is actually to rule, and not be an idle pronunciamento. There must be a solid body of conviction and desire. The rule of law must render articulate an underlying solid body of belief and will. The denial of the efficacy of juridical methods of dealing with disputes between nations is thus at bottom a denial that there is at present among the peoples of the world—I say the peoples, not the diplomats, soldiers and politicians—a will to peace, a profound and enduring conviction of the evils of war.

Theoretically, this is possible. But one thing is certain. The proposal of the outlawry of war, with all that is contained within it, for the first time in history provides a means for discovering whether the will of the peoples is for war or peace. If the former, then wars will continue; no sensible person will waste his time and energy in tinkering with devices to get rid of them or to perfume and sugar-coat them. But let us at least find out what is the desire of the peoples of America and Europe. And

I repeat, the attempt to discover this desire has never been made, for no simple, readily understood and fundamental method for uncovering their desire has ever been proposed, save the one for outlawing war. If their response is the will to peace, the outlawing of war will be the most decisive and comprehensive registration of the will of peoples that history has known. So much for the objection which rests on the futility of passing of laws.

I have written hypothetically, as one must till the trial is actually made. Before one indulges in any pessimistic forebodings as to the outcome, let one remember that hitherto the making of war and of the state of peace which under the war-system is only a truce between wars, has always been in the hands of officials, not of the peoples. The officials, no matter how well-intentioned personally, have been compelled to operate under the terms of the war-system, a system under which secret diplomacy and secret treaties, advancing of one's own nation at the expense of others, maintenance of the balance of power, recourse to intrigue combined with intimidating force, are bound to flourish. At present we are caught in the system, officials who make wars and peoples who suffer from them alike. The system creates the bonds which so tie our hands as to render efforts for peace ineffectual. I repeat what I have already said: As our objections to the plan spring mostly from the fact that our thinking is so

colored by and subdued to the present system that our imagination of the future cannot escape form its influence, so our fears lest the peoples of the earth will not overwhelmingly manifest desire for the delegalizing of war spring from the fact that we conceive them to judge and act under the limitations and distortions imposed by the war-system.

I can only repeat in conclusion what Mr. Morrison has said, that the prime responsibility for commitment to the project rests upon the people of our own country. In the past our geographical situation and our economic resources have to a large extent protected us from being drawn into the war-system. We are now involved in its skirts and unless decisive measures are taken may readily become fully engaged in it without our conscious desire and plan. To save ourselves from being drawn in we must do something positive and decisive. In order to employ our relative immunity for the advantage of other peoples who are directly caught in its meshes, we must also do something. There is nothing the United States can do for Europe—and ultimately for Asia—half as important as to take part in freeing it from the shackles of the war institution. If we can assist in relieving Europe from that overhanging menace, Europe has the resources, material, intellectual and moral, to recover and take her place again as a leader in the friendly rivalry and cooperation of civilizations. Shall we rise in time

to the opportunity to save ourselves from the risk which impends and to do for the rest of the world that which most needs to be done for the sake of enabling peoples to live and work together in amity? It is for the American people to answer, and their answer will be the reception given to the plan to cut the established alliance of law with war so as to put law decisively and irrevocably on the side of peace.

JOHN DEWEY.

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